112-276

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 398.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA, PLAINTIFF IN ERROR,

vs.

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

FILED OCTOBER 13, 1883.

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1 SUPREME COURT OF THE UNITED STATES.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA, *vs.* THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK. } On Writ of Error to the U. S. Circuit Court, District of New Jersey.

Know all men by these presents, that we, Campbell B. Herron, Mark W. Watson, and William H. Singer, all of Allegheny county, Pennsylvania, are held and firmly bound unto the Third National Bank of the city of New York in the sum of five hundred dollars, to be paid to the said the Third National Bank of the city of New York, their successors or assigns, to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this second day of July,
2 1881, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas the above-named, the Exchange National Bank of Pittsburgh, Pennsylvania, hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States for the third circuit and district of New Jersey:—

Now, therefore, the condition of this obligation is such that if above-named, the Exchange National Bank of Pittsburgh, Pennsylvania, shall prosecute its said writ of error to effect, and answer all costs and damages, if it shall fail to make good its plea, then this obligation shall be void; otherwise, to remain in full force and virtue.

CAMPBELL B. HERRON. [SEAL.]
MARK W. WATSON. [SEAL.]
W. H. SINGER. [SEAL.]

Signed, sealed, and delivered in the presence of—
S. C. McCANDLESS.
WM. T. LINDSEY.

3 UNITED STATES OF AMERICA, *Western District of Pennsylvania*, } *ss:*

Campbell B. Herron, Mark W. Watson, William H. Singer, all of Allegheny co., Pa., each being duly [sworn] depose and say, and each for himself says, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

CAMPBELL B. HERRON.
MARK W. WATSON.
WM. H. SINGER.

Sworn and subscribed before me, this 2d day of July, 1881, at Pittsburgh, Pa.

[SEAL.] S. C. McCANDLESS,
U. S. Commissioner W. D. of Pa.

I approve the above bond and the sufficiency of the sureties thereto.

M. W. ACHESON,
U. S. District Judge.

July 2, 1881.

4 Endorsed: United States Supreme Court. The Exchange National Bank of Pittsburgh, Pa., *vs.* The Third National Bank of the city of New York, on writ of error to the U. S. circuit ct., dist. of N. J. Bond approved July 8, 1881. Jno. T. Nixon, J.

5 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States, to the honorable the judges of the circuit court of the United States, for the district of New Jersey, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment in a plaint which was in the said court before you, or some of you, between the Exchange National Bank of Pittsburgh, Pennsylvania, and the Third National Bank of the city of New York, of a plea of trespass on the case, manifest error hath intervened to the great damage of the said The Exchange National Bank of Pittsburgh, Pennsylvania, as by their complaint appears:

We being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, on the second
5½ Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eighth day of July, in the year of our Lord, one thousand eight hundred and eighty-one.

S. D. OLIPHANT,
Clerk of the Circuit Court of the United States for the District of New Jersey.

[Endorsed:] 3,284. United States Supreme Ct. The Exchange Nat'l Bank of Pittsburgh, Penn., *vs.* The Third National Bank of the city of New York. Writ of Error to U. S. circ. ct., distr. of N. J. Ret'ble Oct. term, 1881. John R. Emery, att'y. I allow this writ. Jno. T. Nixon, district judge.

6 UNITED STATES OF AMERICA, *ss:*

To the Third National Bank of the city of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday in October next, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States, for the third circuit, and district of New Jersey, wherein The Exchange National Bank of Pittsburgh, Pennsylvania, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable John T. Nixon, one of the judges of the circuit court of the United States, for the district of New Jersey.

JNO. T. NIXON,
District Judge.

Dated July 8th, A. D. 1881.

6½ [Endorsed:] 3,284. United States Supreme Ct. The Exchange Nat'l Bank of Pittsburgh, Penn., *vs.* The Third National Bank of the city of New York, on writ of error to U. S. circ. ct., distr. of N. J. Citation. John R. Emery, att'y. Ret'ble Oct. term, 1881. Due and legal service of this citation acknowledged July 14, 1881. John W. Taylor, att'y for def'ts. Returned and filed July 19, 1881. S. D. Oliphant, clerk.

7 United States Circuit Court, District of New Jersey.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PENN., *vs.* THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK. } In Case. Judgment on Verdict.

John R. Emery, attorney.

As yet of the ninth day of November, A. D. eighteen hundred and seventy-seven.

Witness:

W. McKENNAN, Esq.,
Cir. Judge.

S. D. OLIPHANT, *Clerk.*

DISTRICT OF NEW JERSEY:

The Third National Bank of the city of New York, the defendants in this suit were summoned to answer, and the Exchange National Bank of Pittsburgh, Pennsylvania, the plaintiffs therein in a plea of trespass on the case, and the plaintiffs aver that they are a banking association established and carrying on business in the State of Pennsylvania, under the laws of the United States, providing for national banking associations, and that the defendants

8 are a banking association established and carrying on business in the State of New York, under said laws—and thereupon the plaintiffs by John R. Emery, their attorney, complain—

For that whereas heretofore, and before the grievances hereinafter mentioned, to wit, on the eighth day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of ten hundred and forty-two dollars and seventy-five cents payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,042.75. PITTSBURGH, *June 8th*, 1875.

Four months after date pay to the order of J. D. Bald-
9 win, ten hundred and forty-two and $\frac{75}{100}$ dollars for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a cor-
10 poration under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield, as a draft upon the company for or on account of such ship-

ments to the company, and as their regular business paper; and that the said Walter M. Conger was then and for a long time, to wit, had been secretary and manager of said company, and
11 during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which, the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver, that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the ninth day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark
12 Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company and obtaining an acceptance thereof by said company for the plaintiffs.

By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive, in the trans-
13 action of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twelfth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to
14 obtain an acceptance of said bill by the said company or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent,
15 to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid; by means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And whereas, also, afterwards, and before the grievances
15½ hereinafter mentioned, to wit, on the eighth day of June, eighteen hundred and seventy-five, at Pittsburg, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of ten hundred and forty-two dollars and seventy-five cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,042.75. PITTSBURGH, *June 8th*, 1875.

Four months after date pay to the order of J. D. Baldwin ten

hundred forty one and $\frac{75}{100}$ dollars for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To WALTER M. CONGER,
Sec'y Newark Tea Tray Company, Newark, N. J.

16 And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

17 And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the ninth day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the

18 same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twelfth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice

to the plaintiffs, or to any other person or persons of the non acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and en-
19 dorsing the said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-
20 acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

21 And whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the fourteenth day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of eleven hundred and sixty-seven dollars and forty-one cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed; said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,167.41. PITTSBURGH, *June 14th*, 1875.

Four months after date pay to the order of J. D. Baldwin, eleven hundred sixty-seven and $\frac{41}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

22 To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Tren-
23 ton, in the district aforesaid, and that the said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time, the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsi-
24 bility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the 15th day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray
25 Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton

aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance and to procure an acceptance of the same by the said company, or in case the same should not be so accepted to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plain-
26 tiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the eighteenth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon. Yet the defendants
27 wholly failed and neglected either to obtain an acceptance of said bill by the said company or to have the same protested for non acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to
28 wit, on the first day of October, in the year aforesaid, at Trenton aforesaid; by means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burch-

field, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

29 And whereas also afterwards, and before the grievances hereinafter mentioned, to wit, on the fourteenth day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of eleven hundred and sixty-seven dollars and forty-one cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea-tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,167.41. PITTSBURGH, *June* 14, 1875.

Four months after date pay to the order of J. D. Baldwin eleven hundred sixty-seven and $\frac{41}{100}$ dollars, value received, and charge the same to account of

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

30 And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers & Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that, being holders and owners of said bill as aforesaid, and for the purpose of having the same pre-

31 sented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the fifteenth day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill, so drawn and endorsed as aforesaid, from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs; by means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect
32 thereof, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the eighteenth day of June, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof. And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to
33 the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been liable to pay the same, but who now, by
34 the neglect of the defendants, are discharged from the obli-

gation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

35 And whereas, also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-eighth day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and o[w]ners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers & Burchfield, for the sum of fifteen hundred and thirty-six dollars and twenty-seven cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,536.27. PITTSBURGH, *June 28th*, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen hundred thirty-six and $\frac{27}{100}$ dollars, value received, and charge the same to account of

ROGERS & BURCHFIELD.

36 To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company
37 were then in good credit and repute, and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers & Burchfield, and by the course of dealing between said Rogers & Burchfield and the said Tea Tray Company, during all that time the said Rogers & Burchfield had been accustomed to draw drafts upon the said company

for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers & Burchfield, as a draft upon the company, for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on
38 said Walter M. Conger individually; all of which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the thirtieth day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton, aforesaid, received the said bill so drawn
39 and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company; or, in case the same should not be so accepted, to have the same protested for non acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity, as an officer of the said company.

40 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the third day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton, aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were

then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company
41 would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield, and J. D. Baldwin were and continued to be solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill, as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin,
42 the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned, if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-eighth day of June, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the
43 plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fifteen hundred and thirty six dollars and twenty-seven cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,536.27. PITTSBURGH, *June* 28, 1875.

Four months after date pay to the order of J. D. Baldwin fifteen hundred thirty-six and $\frac{27}{100}$ dollars, value received, and charge the same to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name
44 and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that, being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the
45 said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the thirtieth day of June, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants.

And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-accept-
46 ance thereof. Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the third day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented

the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons, of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof. And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for ac-
47 ceptance, and at the time when the defendants should have given notice of the non acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers & Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay
48 the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

49 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-sixth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fourteen hundred and thirty-seven dollars and twenty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,437.21. PITTSBURGH, *July 26th*, 1875.

Four months after date pay to the order of J. D. Baldwin four-

teen hundred thirty-seven and $\frac{21}{100}$ dollars, for account ren-
50 dered, value received, and charge to account of—
ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey,
51 to wit, at Trenton, in the district aforesaid, and that the said Tea Tray Company were then in good credit and repute, and that they were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsi-
52 bility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twenty-seventh day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark

Tea Tray Company, and the defendants then and there,
53 to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs.

By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of
54 said bill; that the said company would not accept the same. or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the thirtieth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give no-
55 tice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterward and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October in the year aforesaid, at Tren-
56 ton aforesaid. By means whereof and of the premises, the

plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas also, afterwards and before the griev-
57 ances hereinafter mentioned, to wit, on the twenty-sixth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield for the sum of fourteen hundred and thirty-seven dollars and twenty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,437.21. PITTSBURGH, *July 26th*, 1875.

Four months after date pay to the order of J. D. Baldwin, fourteen hundred thirty seven and $\frac{21}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

58 To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Tren-

59 ton, in the district aforesaid, and the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the twenty-seventh day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants, and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance,
60 and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises, and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the thirtieth day of July, eighteen hundred and seventy-five, at Newark, to wit, at Trenton, aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

61 And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield, and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton, aforesaid.

By means whereof, and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and

who would have been liable to pay the sum therein men-
62 tioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost theirrremedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

63 And for that whereas also, afterwards, and before the grievances hereinafter mentioned, to wit, on the thirtieth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of thirteen hundred and sixty-seven dollars and thirty-five cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,367.35. PITTSBURGH, *July* 30, 1875.

Four months after date pay to the order of J. D. Baldwin thirteen hundred sixty-seven and $\frac{35}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

64 To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs, at said city of Pittsburgh, to wit, at Trenton aforesaid, and the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the
65 said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said

Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield, as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time, and then, was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually,

66 of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the thirty-first day of July, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid as a

67 bill on said Tea Tray Company for the purpose of presenting the same for acceptance to the said company and obtaining an acceptance thereof by said company for the plaintiffs; by means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

68 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants,

afterwards, to wit, on the third day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company; and wholly failed and neglected to give notice that the company
69 would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving
70 due notice of the non acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became, and was wholly, lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that, whereas, also afterwards, and before the grievances hereinafter mentioned, to wit, on the thirtieth day of July, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plain-
71 tiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of thirteen hundred and sixty-seven dollars and thirty-five cents, payable four months after date to the order of J. D. Baldwin,

and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,367.35. PITTSBURGH, *July* 30, 1875.

Four months after date pay to the order of J. D. Baldwin thirteen hundred sixty-seventy and $\frac{35}{100}$ dollars for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing
72 and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company, were and still are a corporation, under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose
73 of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the thirty-first day of July, eighteen hundred and seventy five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants, and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs.

By means whereof and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and
74 effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the

plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the third day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non-acceptance thereof, and the plaintiffs aver that they never received any notice of the non-acceptance thereof.

75 And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of the said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but afterwards, and before the time of payment of said bill, according the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid; by means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-

76 acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

77 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twelfth day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of nine hundred and fifty dollars and twenty-five cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$950.25. PITTSBURGH, *August* 12, 1875.

Four months after date pay to the order of J. D. Baldwin nine

hundred and fifty and $\frac{25}{100}$ dollas, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

78 To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid; and the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid, and that the
79 said Tea Tray company were then in good credit and repute, and that they then were and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between the said Rogers and Burchfield and the said Tea Tray Company during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on acconnt of such shipments to the company and as their regular business paper, and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person [of] small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individu-
80 ally, of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton, aforesaid, had notice.

And the plaintiffs further aver, that being holders and owners of said bill, as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs of the non-acceptance thereof by the said company, they afterwards, to wit, on the twelfth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea

Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed, as aforesaid,
81 said, as a bill on said Tea Tray Company for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same, in his official capacity, as an officer of said company.

Yet the plaintiffs say that the defendants, well knowing
82 the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the sixteenth day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company; and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger
83 would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill, according to the tenor and effect thereof they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs as endorsees

of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill,
84 and who would have been liable to pay the sum therein mentioned, if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill: and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, twelfth day of August eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the
85 name and firm of Rogers and Burchfield, for the sum of nine hundred and fifty dollars and twenty-five cents payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, add being in the words and figures following, to wit:

$950.25 PITTSBURGH, *August 12th*, 1875.

Four months after date pay to the order of J. D. Baldwin nine hundred and fifty and $\frac{25}{100}$ dollars, for account rendered, value received and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin were res-
86 idents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid. And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for

the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance and due notice given to them, the said plaintiffs of the non-acceptance thereof, they afterwards, to wit, on the twelfth day of August, eighteen hundred and seventy-five, endorsed the
87 said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants. And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof to have the same protested for non-acceptance, and due notice given of the non-acceptance *of the non-acceptance* thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and
88 fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the sixteenth day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof. And the plaintiffs aver that they never received any notice of the non-acceptance.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and con-
89 tinued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay; but who now, by the neglect of the

defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

90 And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-sixth day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of fourteen hundred and twenty-seven dollars and sixty-one cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in words and figures following, to wit:

$1.427.61. PITTSBURGH, *August* 26, 1875.

Four months after date pay to the order of J. D. Baldwin fourteen hundred twenty-seven and $\frac{61}{100}$ dollars, for account rendered, value received, and charge the same to account of

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

91 And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers & Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute, and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers & Burchfield, and by the course of dealing between said Rogers & Burchfield and the said Tea Tray

92 Company, during all that time the said Rogers & Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the

plaintiffs from said Rogers & Burchfield, as a draft upon the company, for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; all of which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that, being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof
93 obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twenty eight day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton, aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company; or, in case the same should not be so accepted, to have the same protested for non acceptance and due notice
94 given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity, as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the thirtieth day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton, aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company

would not accept said bill, and that the said Walter M. Conge would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to
95 obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield, and J. D. Baldwin were and continued to be solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill, as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin,
96 the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned, if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twenty-sixth day of August, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers & Burchfield for the sum of fourteen hundred and twenty-seven dollars and sixty-one
97 cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,427.61. PITTSBURGH, *August 26th*, 1875.

Four months after date pay to the order of J. D. Baldwin fourteen hundred twenty-seven and $\frac{61}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers & Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Piftsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

98 And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof they afterwards, to wit, on the twenty-eighth day of August, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill, so drawn and endorsed as aforesaid, from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs; by means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants

99 to present the same for acceptance, and to procure an acceptance of the same according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the thirtieth day of August, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill

for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof. And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same
100 to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and en-
101 dorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the sixth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on the nineteenth day of August, eighteen hundred and seventy-five, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of three hundred and thirty-nine dollars and thirty-seven cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$336.37. PITTSBURGH, *August 19th*, 1875.

Four months after date pay to the order of J. D. Baldwin three

hundred and thirty-nine and $\frac{37}{100}$ dollars, for account rendered,
102 value received, and charge to account of—
ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of
103 iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company, during all that time, the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that, being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same
104 presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the seventh day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and

then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs. By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be
105 accepted to have the same protested for non-acceptance and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the tenth day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon. Yet the defend-
106 ants wholly failed and neglected either to obtain an acceptance of said bill by the said company or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton

aforesaid; by means whereof, and of the premises, the plain-
107 tiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the sixth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on the nineteenth day of August, eighteen hundred and seventy-five, drawn by certain persons trading under the
108 name and firm of Rogers and Burchfield, for the sum of three hundred and thirty-nine dollars and thirty-seven cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed; said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$339.37. PITTSBURGH, *August 19th*, 1875.

Four months after date pay to the order of J. D. Baldwin, three hundred thirty-nine and $\frac{37}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh in said State; and that said bill was drawn at said city of Pittsburgh, to wit, at Trenton aforesaid.

109 And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on

business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the seventh day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants.

And the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants for the purpose aforesaid, it then and there became
110 the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the tenth day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons, of the non-acceptance thereof; and the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and
111 at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers & Burch-

field, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and
112 whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas also, afterwards, and before the grievances hereinafter mentioned, to wit, on the sixth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of five hundred and nine dollars and seventy-three cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$509.73. PITTSBURGH, *September 6th*, 1875.

Four months after date pay to the order of J. D. Baldwin five hundred nine and $\frac{73}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

113 And the said plaintiffs aver that at the time of drawing and endorsing said draft, the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs, at said city of Pittsburgh, to wit, at Trenton aforesaid, and the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were, and still are, a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and that the said Tea Tray Company were then in good credit and repute; and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burch-

field, and by the course of dealing between said Rogers and
114 Burchfield and the said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield, as a draft upon the company for or on account of such shipments to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time, and then, was a person of small means and responsibility; and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; all of which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same pre-
115 sented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the seventh day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid as a bill on said Tea Tray Company for the purpose of presenting the same for acceptance to the said company and obtaining an acceptance thereof by said company for the plaintiffs; by means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-accept-
116 ance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, after-

wards, to wit, on the tenth day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give
117 notice to the plaintiffs of the non-acceptance thereof by the company; and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and endorsing said draft, and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said
118 bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became, and was wholly, lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the sixth day of September, eighteen hundred and seventy-five, at Pittsburg, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of five hundred and nine dollars and seventy-three cents, payable four months after date, to

the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

119 $509.73. PITTSBURGH, *September 6th*, 1875.

Four months after date pay to the order of J. D. Baldwin five hundred nine and $\frac{73}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

120 And the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance and an acceptance thereof obtained, or the same protested for non-acceptance and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they afterwards, to wit, on the seventh day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs, for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs. By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

121 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the

plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the tenth day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing the said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that
122 afterwards, and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid. By means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non acceptance and dishonor, and would have been able to pay the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorsers of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the thirteenth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid,
123 the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of twelve hundred and seven dollars and forty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,207.41. PITTSBURGH, *September* 13, 1875.

Four months after date pay to the order of J. D. Baldwin twelve hundred seven [and] $\frac{41}{100}$ dollars, for am't of account ren'd, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'ty Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn
124 and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State, and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid. And the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid, and that the said Tea Tray Company were then in good credit and repute, and that they then were, and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and said Tea Tray Company, during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company; and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments
125 to the company, and as their regular business paper; and that the said Walter M. Conger was then, and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually; of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton aforesaid, had notice.

And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in the manner aforesaid, and for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the fourteenth day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted

the said bill to the defendants, and then and there instructed
126 and notified the defendants that the said bill was a bill on said Newark Tea Tray Company, and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and obtaining an acceptance thereof by said company for the plaintiffs.

By means whereof, and by the receipt of the said bill by the defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

127 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the seventeenth day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

128 And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards, the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent and able to pay the amount of said bill; but that afterward and before the time of payment of said bill, according to the tenor and effect thereof, they all became insol-

vent, to wit, on the first day of October in the year aforesaid, at Trenton aforesaid. By means whereof and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now, by the neglect of the defendants, are discharged from the obligation to pay the same and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against
129 the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

And that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the thirteenth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield for the sum of twelve hundred and seven dollars and forty-one cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,207.41. PITTSBURGH, *Sept. 13th*, 1875.

Four months after date pay to the order of J. D. Baldwin, twelve hundred seven $\frac{41}{100}$ dollars, for am't of account ren'd, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

And the said plaintiffs aver that at the time of drawing and
130 endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield, and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed, they, the plaintiffs, carried on their banking business in in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company were and still are a corporation under

the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid, and the plaintiffs aver that being holders and owners of said bill as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same protested for non acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof, they after-
131 wards, to wit, on the fourteenth day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants, and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid from the plaintiffs for the purpose of presenting the same for acceptance, and of obtaining an acceptance thereof for the plaintiffs.

By means whereof, and by the receipt of said bill by the said defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted according to the tenor and effect thereof, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof.

Yet the plaintiffs say that the defendants, well knowing the premises, and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards,
132 to wit, on the seventeenth day of September eighteen hundred and seventy-five, at Newark, to wit, at Trenton, aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance, or to give any notice to the plaintiffs, or to any other person or persons of the non-acceptance thereof.

And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards, the said Rogers and Burchfield, and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; but that afterwards and before the time of payment of said bill according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton, aforesaid.

By means whereof, and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due

133 notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby, also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill, and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

134 And for that whereas, also, afterwards, and before the grievances hereinafter mentioned, to wit, on the twentieth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trading under the name and firm of Rogers and Burchfield, for the sum of thirteen hundred and seven dollars and twenty-two cents, payable four months after date to the order of J. D. Baldwin, and by him endorsed, said bill being directed to Walter M. Conger, secretary of the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,307.22. PITTSBURGH, *September 20th*, 1875.

Four months after date pay to the order of J. D. Baldwin thirteen hundred seven and $\frac{22}{100}$ dollars for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,

135 *Sec'y Newark Tea Tray Co., Newark, N. J.*

And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin, were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid.

And the plaintiffs aver that at the time of drawing said bill, the Newark Tea Tray Company, were and still are a corporation, under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid; and the said Tea Tray Com-

136 pany were then in good credit and repute, and that they then

were and for a long time, to wit, five years, had been purchasers of iron and other articles from said Rogers and Burchfield, and by the course of dealing between said Rogers and Burchfield and the said Tea Tray Company during all that time the said Rogers and Burchfield had been accustomed to draw drafts upon the said company for the shipments made to the company, which were accepted and paid by the company, and that the said bill was received by the plaintiffs from said Rogers and Burchfield as a draft upon the company for or on account of such shipments to the company and as their regular business paper; and that the said Walter M. Conger was then and for a long time, to wit, five years, had been secretary and manager of said company, and during all that time and then was a person of small means and responsibility, and that the plaintiffs would not have discounted the said bill as a draft on said Walter M. Conger individually, of all which the defendants afterwards, to wit, on the day and year aforesaid, at Trenton, aforesaid, had notice.

137 And the plaintiffs further aver that being holders and owners of said bill as aforesaid, and having discounted the same in manner aforesaid, for the purpose of having the same presented for acceptance to the said company, and an acceptance thereof obtained from the said company, or the same protested for non-acceptance, and due notice given to them, the said plaintiffs, of the non-acceptance thereof by the said company, they afterwards, to wit, on the twentieth day of September, eighteen hundred and seventy-five, endorsed the said bill for collection for the plaintiffs, and transmitted the said bill to the defendants, and then and there instructed and notified the defendants that the said bill was a bill on said Newark Tea Tray company; and the defendants then and there, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed as aforesaid, as a bill on said Tea Tray Company, for the purpose of presenting the same for acceptance to the said company, and of obtaining an acceptance thereof by said company for the plaintiffs.

138 By means whereof and by the receipt of the said bill by the defendants, for the purpose aforesaid, it then and there became the duty of the defendants to present the same to the said company for acceptance, and to procure an acceptance of the same by the said company, or in case the same should not be so accepted, to have the same protested for non-acceptance, and due notice given of the non-acceptance thereof by the said company; and it also then and there became the duty of the defendants to communicate to the plaintiffs any information or notice they might receive in the transaction of their business relating to the procuring of an acceptance of said bill; that *that* the said company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity as an officer of the said company.

Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the
139 plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-third day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance to the said Tea Tray Company, and were then and there informed and had notice that the said company would not accept said bill, and that the said Walter M. Conger would not accept the same in his official capacity as secretary of said company, so that the company might be held thereon.

Yet the defendants wholly failed and neglected either to obtain an acceptance of said bill by the said company, or to have the same protested for non-acceptance by the company, or to give notice to the plaintiffs of the non-acceptance thereof by the company, and wholly failed and neglected to give notice that the company would not accept the same, or that the said Walter M. Conger would not accept the same in his official capacity.

And the plaintiffs aver that at the time of making and
140 endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, two months afterwards the said Rogers and Burchfield and J. D. Baldwin were and continued to be solvent and able to pay the amount of said bill, but that afterwards, and before the time of payment of said bill, according to the tenor and effect thereof, they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid; by means whereof, and of the premises, the plaintiffs, as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned if they had received due notice of its non-acceptance and dishonor, and would have been able to pay
141 the same, but who now, by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby also the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton, aforesaid.

And for that whereas also, afterwards and before the grievances hereinafter mentioned, to wit, on the twentieth day of September, eighteen hundred and seventy-five, at Pittsburgh, in the State of Pennsylvania, to wit, at Trenton, in the district aforesaid, the plaintiffs were the holders and owners of a certain other bill of exchange, bearing date on said day, drawn by certain persons trad-

ing under the name and firm of Rogers and Burchfield, for
142 the sum of thirteen hundred and seven dollars and twenty-two cents, payable four months after date, to the order of J. D. Baldwin, and by him endorsed, said bill being directed to the Newark Tea Tray Company, Newark, New Jersey, and being in the words and figures following, to wit:

$1,307.22. PITTSBURGH, *September 20th*, 1875.

Four months after date pay to the order of J. D. Baldwin thirteen hundred and seven and $\frac{22}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD.

To W. M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

143 And the said plaintiffs aver that at the time of drawing and endorsing said draft the said persons trading under the name and firm of Rogers and Burchfield and the said J. D. Baldwin were residents and citizens of said city of Pittsburgh, and that at the time of becoming the holders and owners of said bill so drawn and endorsed they, the plaintiffs, carried on their banking business in the city of Pittsburgh, in said State; and that said bill was drawn at said city of Pittsburgh, and was endorsed as aforesaid and delivered to the plaintiffs at said city of Pittsburgh, to wit, at Trenton aforesaid; and the plaintiffs aver that at the time of drawing said bill the Newark Tea Tray Company were and still are a corporation under the laws of the State of New Jersey, and carried on business in the city of Newark, in the State of New Jersey, to wit, at Trenton, in the district aforesaid.

And the plaintiffs aver, that being holders and owners of said bill, as aforesaid, and for the purpose of having the same presented for acceptance, and an acceptance thereof obtained, or the same
144 protested for non-acceptance, and due notice given to them, the said plaintiffs of the non-acceptance thereof, they afterwards, to wit, on the twentieth day of September, eighteen hundred and seventy-five, endorsed the said bills for collection for the plaintiffs, and transmitted the said bill for the said purpose to the defendants; and the defendants afterwards, to wit, on the day and year last aforesaid, at New York, to wit, at Trenton aforesaid, received the said bill so drawn and endorsed, as aforesaid, from the plaintiffs for the purpose of presenting the same for acceptance, and obtaining an acceptance thereof for the plaintiffs. By means whereof, and by the receipt of the said bill by the said defendants for the purpose aforesaid, it then and there became the duty of the defendants to present the same for acceptance, and to procure an acceptance of the same, according to the tenor and effect of said bill, or in case the same should not be accepted, according to the tenor and effect thereof, to have the same pro-

tested for non-acceptance, and due notice given of the non-acceptance thereof.

145 Yet the plaintiffs say that the defendants, well knowing the premises and the rights of the plaintiffs therein, wrongfully and fraudulently contriving and intending to deceive and defraud the plaintiffs in this behalf, although they, the defendants, afterwards, to wit, on the twenty-third day of September, eighteen hundred and seventy-five, at Newark, to wit, at Trenton aforesaid, presented the said bill for acceptance, wholly failed and neglected either to obtain an acceptance thereof, according to the tenor and effect of the same, or to have the same protested for non-acceptance or to give any notice to the plaintiffs, or to any other person or persons, of the non-acceptance thereof. And the plaintiffs aver that they never received any notice of the non-acceptance thereof.

And the plaintiffs aver that at the time of making and endorsing said draft and delivering the same to the plaintiffs, and at the time of the same being presented for acceptance, and at the time when the defendants should have given notice of the non-acceptance of said bill, and for a considerable time, to wit, afterwards,

146 the said Rogers and Burchfield and J. D. Baldwin were, and continued to be, solvent, and able to pay the amount of said bill; that afterwards and before the time of payment of said bill, according to the tenor and effect thereof they all became insolvent, to wit, on the first day of October, in the year aforesaid, at Trenton aforesaid.

By means whereof, and of the premises, the plaintiffs as endorsees of said bill as aforesaid, were prevented from giving due notice of the non-acceptance and dishonor of said bill to J. D. Baldwin, the payee, and Rogers and Burchfield, the drawers of said bill, and who would have been liable to pay the sum therein mentioned, if they had received due notice of its non-acceptance and dishonor, and would have been able to pay the same; but who now by the neglect of the defendants, are discharged from the obligation to pay the same, and refuse to pay the same; and whereby also, the plaintiffs have lost their remedy against the said drawers and endorser of said bill; and whereby, also, the said bill became and was wholly lost and worthless to the plaintiffs, and the sum therein mentioned became lost to the plaintiffs, to wit, at Trenton aforesaid.

147 To the damage of the plaintiffs twenty thousand dollars, and thereupon they bring their suit, &c.

148 And the said defendants, by John W. Taylor, their attorney, come and defend the wrong and injury, when, &c., and say, that they are not guilty of the said supposed grievances above laid to their charge, or any, or either of them, or any part thereof, in manner and form as the said plaintiffs have above thereof complained against them, and of this they, the said defendants, put themselves upon the country, &c.

And the said plaintiffs do the like.

149 Afterwards, to wit, on the 28th day of March, 1878, the parties aforesaid, by their attorneys aforesaid, waived a jury for the trial of the issues in above cause by stipulation in writing, then filed with the clerk of said court, of which the following is a copy:

United States Circuit Court, District of New Jersey.

THE EXCHANGE NATIONAL BANK, OF PITTSBURGH, PENNSYLVANIA, *vs.* THE THIRD NATIONAL BANK, OF THE CITY OF NEW YORK. } In Case Waiver of Jury.

We hereby waive a jury in the above stated cause, and agree that the issues af facts may be tried and determined by the court, without the intervention of a jury.

Dated March 28th, 1878.

JOHN R. EMERY,
Att'y for Plaintiffs.
JOHN W. TAYLOR,
Att'y for Def'ts.

[Endorsed:] United States circuit court, district of New Jersey. The Exchange National Bank of Pittsburgh, Pa. *vs.* The Third National Bank of the city of New York. Case. Waiver of jury. Stipulation waiving jury in this cause. Filed Mc'h 28, 1878. S. D. Oliphant, clerk.

150 Afterwards, that is to say on the twenty-eight day of March, in the year eighteen hundred and seventy-eight, in the term of March, eighteen hundred and seventy-eight, before the Honorable William McKennan, judge of the said circuit court, at Trenton, in said circuit, came as well the within named, the Exchange National Bank, of Pittsburgh, Pennsylvania, as the within named, the Third National Bank of the city of New York, by their respective attorneys within named, and produce before the said judge their respective witnesses, documents, and proofs, upon the said issues, and the said court having heard the same and the argument of counsel thereon, retains the cause for advisement until the March term, eighteen hundred and eighty-one, of said court, and on the thirteenth day of April, eighteen hundred and eighty-one, the following special finding of facts was made and filed by the court, as the result of the evidence upon the trial of said issue.

151 In this cause, tried before the court without a jury, the following facts are found by the court as a result of the evidence:

1. That the plaintiff is the holder of eleven drafts for various sums, amounting altogether to twelve thousand two hundred and ninety-two dollars and fifty-eight cents ($12,292.58), which were drawn by Rogers & Burchfield, at Pittsburgh, to the order of J. D. Baldwin, and by him endorsed on Walter M. Conger, sec'y Newark Tea Tray

Company, Newark, N. J. These drafts in question were discounted before acceptance by the plaintiffs, at Pittsburgh, for Rogers & Burchfield.

2. These drafts bear different dates, from June 8, 1875, to September 20, 1875, and are in all respects similar except as to the sums payable, and are in the following form:

$1,042.75. PITTSBURGH, *June* 8, 1875.

Four months after date pay to the order of J. D. Baldwin ten hundred and forty-two $\frac{75}{100}$ dollars, for account rendered, value received, and charge to account of—

152 ROGERS & BURCHFIELD.

To WALTER M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

3. They were transmitted for collection at different times before maturity, by the plaintiff to the defendant, in letters describing them by their numbers and amounts, and by the words "Newark Tea Tray Co.," and were sent by the defendant to its correspondent, the First National Bank of Newark, enclosed in letters describing them generally in the same way. The following is a copy of the first letter, enclosing draft for $1,042.75 to the defendant.

EXCHANGE NATIONAL BANK OF PITTSBURGH,
PITTSBURGH, PA., *June* 9, 1875.

C. A. JORDAN,
Cashier, New York, N. Y.:

DEAR SIR: I enclose—

No. 3,932.	Iron Clad Can Co	$815 47
3,934.	Parkhurst and Wilkinson	2,492 09
3,935.	same	2,500 00
3,948.	Newark Tea Tray Co	1,042 75
Check on Bank of America, July 1		2,700 00
Checks as per memorandum		6,451 69

153 Yours, resp'y, A. LONG, *Cash.*

The others letters, enclosing drafts to defendant from June 15, 1875, to September 20, 1875, were in all respects similar as to the drafts in question.

The following is a copy of the letter enclosing first draft from defendant to the First National bank of Newark:

THIRD NATIONAL BANK,
NEW YORK, *June* 11, 1875.

JAS. A. HEDDEN, ESQ.,
Cashier, Newark, N. J.:

DEAR SIR: Please receive herewith for collection and return—

Essex Co. Nat.	$1,518 00	
Mechs.	74 19	
		$1,592 19

St. No Protest S. T. Guenin $92 47
Oct. 11th, Newark Tea Tray Co. 1,042 75
Yours truly, C. N. JORDAN, *C.*

The other letters from defendant to said bank, enclosing the remaining drafts, were similar in form to above, so far as relates to the drafts in question, except letter August 2nd, 1875, enclosing draft for $1,357.35, and letter of August 14th, 1875, enclosing draft for $950.25, in which the drafts were described as on "W. M. Conger, secy."

154 The drafts in question were transmitted to and received by the defendants at New York within a day or two of the time of discounting them.

4. By the First National Bank of Newark they were presented for acceptance, and with one exception were accepted by writing on the face of them as follows: "Accepted; payable at the Newark National Banking Co., Walter M. Conger," when the acceptances were taken in this form, the time of payment of the drafts was so far distant that there was sufficient time to communicate to the plaintiff the form of the acceptance, and for the plaintiff thereafter, if such communication had been made, to give further instructions as to the form of acceptance.

5. The First National Bank of Newark held them for payment, but the plaintiff was not informed of the form of acceptance until the 13th and 19th October, 1875, two of the drafts were returned to it by the defendant when both the drawers and endorsers were insolvent.

155 6. At the time when the drafts were discounted by the plaintiff the drawers were in good credit, but none of them have been paid, and they were duly protested for non-payment.

7. The Newark Tea Tray Co. is a corporation created by the laws of New Jersey, and doing business in that State, and Walter M. Conger is its secretary.

8. The drafts in question were represented to the plaintiff by Burchfield, one of the drawers, who offered them for discount to be the paper of the Newark Tea Tray Co., drawn against shipments of iron by Rogers & Burchfield to said company, and were discounted as such by the bank; and that he also represented that Walter M. Conger was the person who examined the shipments of iron, accepted the drafts, and that the drafts were drawn in this form for the convenience and accommodation of the company.

9. On drafts of Rogers & Burchfield on "the Newark Tea Tray Co." dated May 4, 1874, for $598.41, May 20, 1874, for $1,540.60,

156 and June 30, 1874, for $2,002.60, discounted by plaintiff and transmitted for acceptance to defendant, and bythem sent to the said Newark bank. The Newark bank took acceptances from "Walter M. Conger" individually without notice to the plaintiff, and said Conger during the time drafts sent by the plaintiff to defendant addressed to the "Newark Tea Tray Co.," and to "Walter

M. Conger, sec'y Newark Tea Tray Co., Newark, N. J.," were in the hands of the said Newark bank to procure acceptance, informed the cashier of the Newark bank that he would not accept these drafts in his official capacity as secretary.

W. McKENNAN,
Cir. Judge.

157 And at the term aforesaid, upon the day aforesaid, it is upon the said facts specially found, as aforesaid, by the said court, considered that the said the Exchange National Bank of Pittsburgh, Pennsylvania, take nothing by their said writ, but that they be in mercy, &c., and that the said the Third National Bank of New York do go thereof without day, &c.

And it is further considered by the court, now here before the judge thereof, that the said the Third National Bank of New York do recover against the said the Exchange National Bank of Pittsburgh, Pennsylvania, seventy-five dollars and fifty-five cents, for their costs and charges by them laid out about their defence in this behalf, before the judge thereof, now here adjudged to the said the Third National Bank of New York, and with their assent, according to the form of the statute in such case made and provided, and that the said defendants have execution thereof.

Judgment signed this thirtieth day of April, A. D. eighteen hundred and eighty-one.

W. McKENNAN, *Cir. J.*

158 *Opinion.*

In the Circuit Court, District of New Jersey.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH
vs.
THE THIRD NATIONAL BANK OF NEW YORK.

McKENNAN, *Cir. J.*

This suit is brought to recover the amount of eleven several drafts, discounted by the pl'ff, and transmitted to the def't for collection, and alleged to have been lost by the def't's negligence in receiving an improper acceptance thereof, and in not causing the same to be protested for non-acceptance, and due notice to be given to the pl'ff.

A jury was dispensed with, and the case heard by the court upon the evidence submitted.

The above facts are found as the result of this evidence.

The question upon these facts is, was the def't guilty of negligence in the discharge of its duty as the pl'ff's agent, whereby the pl'ff was subjected to loss?

159 What, then, was the duty of the def't? The drafts were payable at a certain future day, and were sent to the def't for collection. As was said by Selden, J., in Walker *v.* The Bank of the State of New York, 9 N. Y. Rep., 584, "that any agent whether it be a bank or an individual, receiving a note or bill from

the holder for collection, is responsible for any loss which the holder may sustain on account of any neglect in presenting it, or in giving notice of its dishonor; that it is the duty of an agent who receives for collection a bill of exchange, payable at some future time, to use due diligence in presenting the same for acceptance, and if he fail to do so, or fail to give notice in case acceptance is refused, he will be liable." Failure to present a bill for acceptance before maturity by an agent to whom it is entrusted for collection without special instructions, will not constitute want of due diligence, because acceptance before the day fixed for payment is not necessary to hold the drawee and endorsees, as was held in Bank of Washington *v.* Triplet, 1 Pet., 25; but if it is presented and acceptance ac-
160 cording to its tenor is refused, if the agent fail to give notice he will be liable.

The drafts here were addressed to " Walter M. Conger, Sec'y Newark Tea Tray Co., Newark, N. J.," were duly presented to him, and were accepted in writing across their face, as follows: "Accepted, payable at the Newark National Banking Co., Walter M. Conger."

It is contended by the pl'ff that the drafts were addressed to the Newark Tea Tray Co., and that the acceptances were not by that company, but by Walter M. Conger individually, and that by taking them in this form the def't caused the loss to the pl'ff of the drawers of the bills; and upon this hypothesis the right of the pl'ff to recover entirely depends.

It is urged with equal earnestness on the other side that in legal effect the drafts were drawn on Walter M. Conger, with the suffix of sec'y as matter of personal identification, and that the acceptances were by the proper person in his proper character.

The most that can be imputed to the def't is, that it erred
161 in judgment as to the import of the address upon the bills, and, therefore, did not cause them to be protested for non-acceptance, and notice to be given to the parties. Is this unfaithfulness or negligence in a sense which will subject the def't to liability for the loss complained of?

Whether the def't was bound to present the drafts for acceptance before their maturity or not, it certainly evinced a disposition to fulfil its agency with diligent faithfulness, by promptly presenting them for acceptance to the person named as drawee. And this it did without special instructions from its principal, and without any information which might qualify or explain the import of the drafts upon their face or repel the presumption arising from the restricted functions of the secretary of a corporation, that he was not its financial representative. Thus left to the exercise of its own judgment when it regarded Mr. Conger as addressed in his individual character, it did not fall into a culpable or irrational error, because it followed the guidance of the decisions of courts of the highest standing upon the subject.

In Kean *v.* Davis, 1 Zab., 683, a case decided by the supreme

162 court of the State in which the acceptances here were made and were payable—and therefore, of special, if not of decisive significance—it was held that a bill signed "John Kean, president Elizethtown and Somerville R. R. Co." was to be taken as *prima facia* the individual bill of John Kean; but, inasmuch as the R. R. Co. was named in the body of the bill as payee, such an ambiquity existed as to render parole evidence admissible to explain it, and show that the bill was drawn in behalf of the company.

In Moss *v.* Livingston, 4 N. Y., Rep. 208, a bill was drawn on "John R. Livingston, Jr., president Rosendale M'ng Co. New York," and was accepted by "John R. Livingston, Jr., president Rosendale M'ng Co. 16 Wall St." and the court held that the company was not bound by it, saying: "The bill cannot be deemed the obligation of the company it does not purport to have been drawn in their behalf nor was addressed to them, or accepted in their corporate name. They were not, therefore, bound by it. In order then to give it any legal effect, we must hold it to be the private act of the parties whose names are written upon it,
163 and binding upon them as an ordinary bill of exchange."

There are many other cases of similar tenor, which hold, that affixing an official or representative designation to the name of a promissor will not change the personal import and character of an obligation which does not indicate a different liability on its face. These cases are collected in 1 Daniel on Neg. Inst., sec. 455, &c.; and in the note to Burlingame *vs.* Brewster, 22 Amer. Rep. 177, to which no more than this general reference is needed.

Now that there are cases in conflict with these referred to is undeniable; but whether the preponderance of authority is in favor of the pl'ff or the def't, contention is indecisive of this case. Intelligent and cautious judgment upon the information with which it was supplied, and reasonable diligence, are the conditions which the def't engaged to fulfill. If, then, in accordance with the decisions of the courts of the State in which the drawee of the drafts resided, and where they were to be accepted and paid, and of concurrent decisions elsewhere, it treated them as drawn on Walter M. Conger, and took his acceptances accordingly, it did not
164 commit any breach of duty, and the pl'ff cannot recover.

Moreover, the plaintiff alone knew who was the intended drawee, as understood between it and the drawers. Of this its agent ought to have been advised, that it might have a certain guide in the performance of its duty. But the pl'ff omitted to furnish this information, and now seeks compensation for an alleged injury which the exercise of thoughtful diligence on its part would have averted. If there was any error of judgment by def't the pl'ff is by no means blameless.

There must, therefore, be a judgment for the def't upon the facts found by the court, which the clerk is hereby directed to enter.

165 UNITED STATES OF AMERICA, *District of New Jersey*, } *ss:*

I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, in the third circuit, do hereby certify the foregoing to be a true transcript of the record and proceedings in said entitled cause as the same remain of record and on file in my office at Trenton, in said district.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Trenton, in said district, this eighth day of October, A. D. eighteen hundred and eighty-one.

[SEAL.] S. D. OLIPHANT, *Clerk.*

166 *Assignments of Error.*

United States Supreme Court of the Term of October, in the year of our Lord one thousand eight hundred and eighty one.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA, Plaintiff in Error,

vs.

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK, Defendant in Error.

On Error to the Circuit Court of the United States for the District of New Jersey.

Afterwards, to wit, on the tenth day of October, in the same term, before the Supreme Court of the United States, comes the said The Exchange National Bank of Pittsburgh, Pennsylvania, by John R. Emery, its attorney, and says that in the record and proceedings aforesaid, and also in the giving the judgment aforesaid, there is manifest error in this, to wit:

167 That by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid, given upon the facts specially found by the said circuit court upon the trial and determination by said court of the issues above joined, was given for the said The Third National Bank of the City of New York against the said The Exchange National Bank of Pittsburgh, Pennsylvania, whereas the said facts specially found do not warrant the said judgment, and were insufficient to support the same, and the judgment of the said circuit court upon the said facts specially found, should have been given for the said The Exchange National Bank of Pittsburgh, Pennsylvania, and against the said The Third National Bank of the City of New York.

And, that there is also error in this, to wit, that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said The Third National Bank of the City of New York against the said The Exchange National Bank of Pittsburgh, Pennsylvania; whereas, by the law of the land, the said

judgment ought to have been given for the said The Ex-
168 change National Bank of Pittsburg, Pennsylvania, against the said The Third National Bank of the City of New York.

And the said The Exchange National Bank of Pittsburgh, Pennsylvania, prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether for nothing holden, and that it may be restored to all things which it hath lost by occasion of the said judgment.

JOHN R. EMERY,
Att'y for Plaintiff in Error.

Endorsed: U. S. Supreme Court. The Exchange National Bank of Pittsburgh, plaintiff in error, *vs.* The Third National Bank of the City of New York, defendant in error. On error to U. S. circ. ct., distr. of N. J. Assignments of error. John R. Emery, plaintiff's att'y.

Endorsed on cover: New Jersey. C. C. U. S. No. 398. The Exchange National Bank of Pittsburgh, Pennsylvania, plaintiff in error, *vs.* The Third National Bank of the City of New York. Filed 13th October, 1881.

12-276

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Supreme Court of the United States.

No. 63 . *October Term, 1884*

and No. 86 . *October Term, 1884*

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA,

Plaintiff in Error.

vs. } *No.* 63

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK.

Defendant in Error.

THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PENNSYLVANIA,

Plaintiff in Error.

vs. } *No.* 86.

THE THIRD NATIONAL BANK OF THE CITY OF NEW YORK,

Defendant in Error.

In Error to the Circuit Court of the United States for the District of New Jersey.

BRIEF FOR PLAINTIFFS IN ERROR.

JOHN R. EMERY,
MALCOLM HAY,
THOS. N. McCARTER,
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United States Supreme Court.

OCTOBER TERM, ~~1883.~~ 1884

THE TRADESMAN'S NATIONAL BANK OF PITTSBURGH, PA., *Plaintiff in Error,* *and* THE THIRD NATIONAL BANK OF NEW YORK, *Defendant in Error.*	*No.* ~~375.~~ 63 *On Writ of Error to Circuit Court of the United States, for the District of New Jersey.*
THE EXCHANGE NATIONAL BANK OF PITTSBURGH, PA., *Plaintiff in Error,* *and* THE THIRD NATIONAL BANK OF NEW YORK, *Defendant in Error.*	*No.* ~~398.~~ 86 *On Writ of Error to Circuit Court of the United States, for the District of New Jersey.*

These cases (with the exception of a single fact or point) are substantially the same, and are argued together. The brief is made on the facts in the Exchange Bank case, (~~No. 398.~~) and at the end of the brief attention will be called to the point or fact existing in the Exchange Bank case, which does not exist in the Tradesman's Bank's case. 1086

BRIEF FOR PLAINTIFFS IN ERROR.

I.

STATEMENT.

This is a writ of error brought upon a judgment rendered in the Circuit Court of the United States, for the District of New Jersey, in favor of the defendant in error, the defendant below, in an action at law brought against the defendant by the plaintiff in error, also the

plaintiff below. The issues in the cause were tried by the Court without a jury, pursuant to written waiver, (p. 54, fol. 149,) and the finding of facts by the Court was special, (pp. 54, &c.) The general question on the appeal is whether the facts specially found, warrant the judgment in favor of defendant. The plaintiff in error insists that they do not, but that upon these facts, judgment should have been rendered in its favor, (assignments of error, p. 60, fol. 167.)

As to its general nature, the suit was one brought by a principal against an agent for neglect of duty, and in form an action on the case in tort, according to the practice in New Jersey. The existence of an agency is not disputed, and the questions are, as to the character and extent of the agency, and whether the duties imposed by it upon the defendant were performed. The parties—plaintiff and defendant—are banking institutions, the former carrying on business at Pittsburgh, and forwarding to the defendant, its correspondent in New York, commercial paper for presentation, collection, &c.; and the special question in this case is, whether the New York bank has performed its duty as such agent, in relation to certain time drafts (at 4 months,) which it received for the purpose of procuring acceptance. An acceptance of the drafts was taken, but the plaintiff claims that the acceptance was not such either in form or substance as the defendant was bound to procure, and the plaintiff therefore claims that the drafts were not accepted; and that it should have been notified of the non-acceptance, so that it might at once have recovered their amount from the drawers for whom the plaintiff discounted the drafts before forwarding.

In form, the drafts (11 in number, amounting in all to $12,292.58,) were drawn at Pittsburgh, Pa., by Rogers & Burchfield, upon "Walter M. Conger, Secretary Newark Tea Tray Co., Newark, N. J.," for account rendered, for value received, and directing charge to account of drawers.

The following copy of one of the drafts shows the form: (see p. 55.)

"$1,042.75. PITTSBURGH, June 8, 1875.

Four months after date pay to the order of J. D. Baldwin ten hundred and forty-two $\frac{75}{100}$ dollars, for account rendered, value received, and charge to account of—

ROGERS & BURCHFIELD."

To WALTER M. CONGER,
Sec'y Newark Tea Tray Co., Newark, N. J.

They were drawn to the order of J. D. Baldwin, endorsed by him, and were received by the plaintiff from Rogers & Burchfield as business paper of the Tea Tray Co., and discounted as such for Rogers & Burchfield before acceptance. (Findings 1 and 8, pp. 55 and 56.) After being discounted, they were forwarded for acceptance to the New York bank in letters describing them as drafts of the *Newark Tea Tray Company.* (Finding 3, p. 55.) The plaintiff claims that, by the understanding between themselves and the drawers, the drafts were company paper; that upon the information and instruction as to the character of the paper, to be derived, both from the drafts themselves and the letters, the New York bank was bound to procure an acceptance of the company, or of Conger, as secretary of the company. The defendant forwarded the drafts to the First National Bank at Newark, their correspondent there, for acceptance, in letters also describing them as "Newark Tea Tray Company," drafts. (Finding 3, p. 56.) The Newark bank presented the drafts to Conger, but, instead of procuring an acceptance by the company, or by Conger, as secretary of the company, took acceptances, signed, "Walter M. Conger," and were informed that he would not accept these drafts in his official capacity as secretary. (Finding 9, pp. 56 and 57.) No protest of the drafts was made for non-acceptance, and the plaintiff was not notified of the form of the acceptance, or of the refusal of Conger to accept in his official capacity, until the return of the drafts protested for non-payment at the end of the four months—although at the time when the acceptances were taken in this form, there

was sufficient time to have communicated the same to the plaintiff, and to have received further instructions. (Findings 4 and 9.)

The plaintiff claims that this acceptance was not according to the form and tenor of the draft, or of the instructions; that it was no acceptance, and that the drafts should have been protested for non-acceptance, and that it should have been notified in order to recover at once against the drawers and endorser; and that by reason of the failure to notify them of the non-acceptance, they have lost the drawers and indorser of the bills.

At the time when the drafts were discounted and forwarded, the drawers and indorser were in good credit and standing, but when returned for non-payment four months later, they were insolvent. (Finding 6, p. 56.) Upon these facts the Circuit Court, (Hon. W. McKennan, Circuit Judge,) ordered judgment for defendant. (p. 57.)

II.

Errors Assigned.

1. That the facts specially found were insufficient to support the judgment in favor of the defendant.

2. That upon the facts specially found, judgment should have been given for the plaintiff in error.

3. That judgment should have been given for the plaintiff against the defendant. (Assignments of error, p. 60.)

III.

Preliminary Points.

(1.) *As to the parties to the action.*

The negligence alleged in this case was that of the Newark bank, the agent or correspondent of the defendant, and we make, therefore, a preliminary reference to the authorities, holding that, in this case, the defendant is responsible to the plaintiff (which had no correspondence with the Newark bank,) for any negligence of the

agents or correspondents employed by the defendant, and that the plaintiff has no right to recover directly against this agent or correspondent of the defendant.

This is the settled rule, both in the State of New York, where the drafts were received by the defendant, and in the State of New Jersey, where the duty of presenting for acceptance was to be performed.

New York Cases—Allen vs. *Merchants' Bank*, 22 Wend. 215, (Ct. of Errors, 1839,) the leading case, and also,

Ayrault vs. *Pacific Bank*, 47 N. Y. 570, (Court of Appeals, 1872,) Allen J., p. 573. "A bank receiving a bill or promissory note for collection, whether payable at its counter or elsewhere, is liable for any neglect of duty occurring in its collection, by which any of the parties are discharged, whether of the officers and immediate servants, or other agents of the bank, or its correspondents or agents employed by such correspondents," citing *Allen* vs. *Bank*, *supra*, and later cases.

New Jersey Cases—Titus vs. *Mechanics' National Bank*, 6 Vroom, (35 N. J.) 588, (Court of Errors and Appeals, 1871,) where the New York rule was finally adopted.

This Court, in *Britton* vs. *Nichols*, 104 U. S. 757, (Oct. Term, 1881,) held that the liabilities of collecting agents were to be governed by the law of the State, and in *Hoover* vs. *Wise*, 91 U. S. 308, (1875,) the New York rule, as to *collection by bankers*, was also approved by this Court, as well in the opinion of the Court (p. 313,) as in the dissenting opinion, (p. 316.)

[We think it may be fairly stated that before this decision in *Hoover* vs. *Wise*, an action was at first brought by the plaintiff directly against the Newark bank, in the United States Circuit Court, and that this decision being announced before the trial, the plaintiff was non-suited in that action on the authority of this decision, and upon the ground that its only remedy was against the New York bank, as its agent. This was accordingly brought, and the New York bank holds funds of the Newark bank, for their indemnification, and this action is really

defended by the Newark bank or its successors in interest.] We have no grounds for supposing that the propriety of the action in this respect will be questioned, and this reference is made only for the purpose of calling the attention of the Court to the status of the parties under the laws of the States.

(2.) *As to the precise nature of the plaintiff's claim.*

In the examination of this case, and of cases which may be cited as authority or for illustration, it is important to bear in mind two considerations:

1. *The nature of the action*, which is that of a principal against an agent, and is to be governed by the rules resulting from that relation.

Different rules and considerations may be applicable when the question as to the character of an acceptance and the persons bound thereby arises between the holder of a bill and *alleged parties* to the bill. For instance, suppose there was, on the part of an agent receiving a bill, a special agreement with his principal to perform certain duties in relation to it, although not such as would, perhaps be implied from the simple receipt of the bill—thus on a bill, drawn on "A. B., president," without further designation, received by the agent under an agreement or instructions to procure an acceptance of A. B., as president *of a particular company*, or otherwise protest, the agent would be liable on failure to notify of refusal so to accept. Or, if a bill were drawn on "*A. B., president of C. Co.*," with a notification that it was a *company* bill, and with instructions to procure an acceptance from A. B. as president of the company, the agent receiving for this purpose would be responsible for failure to procure such acceptance or to protest. These questions are, to some degree at least, independent of the question whether the holder might or might not *recover of the company* on the acceptance taken.

2. The nature of the injury or loss sustained by the plaintiff on the failure to protest for non-acceptance—*it being the loss of the drawers and endorser* who were bound, as to the plaintiff, to take up the paper, if not accepted

by the company. Its claim is, not the loss of the acceptor, but of the drawers and endorser. The only rights which plaintiff had on the paper, at the time of its receipt by the defendant, were against the drawers and endorser, and the plaintiff was as against them only entitled to recover if acceptance was refused by the parties on whom the bill (as between them and plaintiff) was drawn.

Bearing these considerations in mind, we rely upon the following:

IV.

POINTS FOR PLAINTIFF IN ERROR.

First Point.

As to the duty of a collecting agent to present a time draft for acceptance, and to give notice of non-acceptance, in case of its refusal; and the nature and extent of the holder's loss and the agent's liability, on failure to perform this duty.

It is the duty of an agent presenting a bill for acceptance, either to procure a proper acceptance, or to give notice of non-acceptance, in case such proper acceptance is refused.

Walker vs. *Bank, &c., of N. Y.*, 9 N. Y. (5 Seld.) 582. Selden, *J.*, p. 584. "Any agent * * receiving a note or bill from the holder for collection, is responsible for any loss which the holder may sustain on account of any neglect in presenting it, or in giving notice of its dishonor; it is the duty of an agent who receives for collection a bill of exchange payable at some future time, to use due diligence in presenting the same for acceptance, and if he fail to do so, or to give notice in case acceptance is refused, he will be liable."

Also, *Ayrault* vs. *Pacific Bank*, 47 N. Y. 573.

The loss which the holder sustains on such failure of duty upon the part of the agent, is the discharge of the drawers and previous endorsers, who are discharged by

the failure to give notice of non acceptance, and cannot be held upon the bill by a subsequent presentment for for payment at its maturity, and a notice of non-payment by the holder. This discharge of the drawer and endorser, follows from the doctrine peculiar to the United States and England, that a drawer or endorser of a bill, dishonored for non-acceptance, cannot be charged by the holder by reason of its subsequent dishonor for non payment.

See 2 *Ames' Lead. Cases, Notes and Bills*, 121, 123 and note, citing *inter al.*

Evans vs. *Gee*, 11 Pet. 80. (1837.) WAYNE, *J.*, p. *84. "The undertaking of the drawer is not that he will pay the bill, but that the drawee will accept and pay; and the liability of the drawer only attaches when the drawee refuses to accept, or having accepted, fails to pay."

And *Watson* vs. *Turpley*, 18 How. 517. (1855.) DANIEL, *J.*, p. 519. "Justice to the drawer, with the view of enabling him to guard himself from injury, imposes upon the holder the obligation of protest and notice upon non-acceptance; but beyond this, he sustains no connection with the drawee of the bill, and is under no obligation afterwards to present the latter for payment; of course he cannot be rightfully held to protest and notice for non-payment."

See also *Whitehead* vs. *Walker*, 9 M. & W. 505. (Exch. 1842.) PARKE, B., p. 516. "The holder thus acquires by the non acceptance the most complete right of action against the drawer which the nature of the case admits, and no subsequent act or omission of the drawee can give him a more extensive right against the drawer than he has already acquired. But further, on failure of acceptance, the holder is bound to give immediate notice to the drawer, and if he omits to do so, he forfeits all right of action against him, not only in respect of the default of acceptance, but also in respect of the subsequent non-payment."

In favor of a *bona fide purchaser for value*, subsequent to the failure to notify of non-acceptance, the drawer

may, however, be held by presentation for payment and notice of non-payment.

See 1 *Ames' L. C. N. & B.* 468, citing *inter al.*,

Dunn vs. *O'Keefe*, 5 M. & S. 282. (K. B., 1816.) LD. ELLENBOROUGH, *Ch. J.*, p. 286. "They (previous cases) established this, that if the *party holding* a bill of exchange, receive notice of its dishonor, he is bound to communicate this to the drawer. But it has not yet been determined that the want of notice operates further than a personal discharge of the drawer, *as against the party failing to give the necessary notice*, nor that an innocent endorsee shall be barred of his action by any latent defect in the transfer, or concoction of the bill, except in the two cases of the bill being given on a gaming or usurious consideration."

SECOND POINT.

As to the character of acceptance, which the plaintiff, (as between it and the drawers) was entitled to and was bound to procure, in order to hold the drawers on the bill.

The drafts were in good faith received and discounted as business *drafts upon The Newark Tea Tray Company.* (Finding 8, p. 56) The effect of this, as between the plaintiff and drawers was that as to the drawers, plaintiff was entitled to an acceptance from the company, or from Conger officially, or to a protest if not so accepted. The drawers also were entitled, (as against the plaintiff) to the same character of acceptance, both as an acknowledgment of their debt by the company and as a promise to pay it. An acceptance by Conger individually was not what they intended or were entitled to. They would, therefore, not be liable on the drafts as between them and plaintiff, if the plaintiff failed to procure this acceptance, and the plaintiff was entitled, on a refusal of such acceptance, to hold the drawers for the amount of the bill, whatever might be, as between other parties, the character of the paper.

THIRD POINT.

General rule as to the character of acceptance, which a collecting agent, as between himself and the holder, is bound to procure.

The general rule is, that the holder *in order to hold the drawer*, must get, and is entitled to have, an acceptance, *according to the very terms of the bill as drawn*, and we insist that in the absence of other instructions than those arising from the face of the paper itself, an agent is bound to procure such acceptance, according to the tenor of the bill.

Chitty on Bills, *287. "The holder might in all cases insist on an absolute acceptance in writing on the face of the bill, *according to the very terms of the bill*, and in default thereof, might consider the bill as dishonored"—and cases cited. *

1 *Ames' Lead. Cases, B. & N.*, 146–150, &c., and note, although a *drawee* may bind himself by an acceptance, varying from the tenor of the bill, either by a partial acceptance, "payable half in money and half in bills,' as in *Petit* vs. *Benson*, Comberbach, 452, (1697,) or a conditional acceptance, "payable when goods are sold," as in *Smith* vs. *Abbot*, 2 Strange, 1152, (1741,) and *Moss* vs. *Withy*, Bull. N. Pr. 270, (1770,) yet "if a holder is content to take an acceptance varying from the tenor of the bill, he thereby discharges the drawer and endorsers, unless they, upon due notice of the qualified acceptance, assent thereto," *Ib.* p. 150, note citing *inter al.*,

Sebag vs. *Abithol*, 4 M. & Sel. 462, 466.

Rowe vs. *Young*, 2 Br. & B. (6 E. C. L.,) 165, (House of Lords, 1820,) where an acceptance qualified as to time, discharged drawer.

Walker vs. *Bank*, 5 Seld. 582, (1854,) where a draft drawn by the "Empire Mills," upon "E. C. H., Esq." was accepted—"Accepted, Empire Mills, by E. C. H., Treas." and the drawer was discharged by failure to protest for non-acceptance.

Niagara Bank vs. *Manf. Co.*, 31 Barb. 403, (1860,) where a drawer was held discharged by an acceptance payable at a different place from the residence of the drawee, and where it was said (p. 405) that "*the acceptance becomes part of the bill*, and any material variance from the tenor and import of the bill made in the terms, or manner of the acceptance, taken or assented to by the holder, must be at his own risk, and must discharge the drawer, &c." The only exception allowed is the acceptance, payable at a *particular place*, in the town, &c., where the bill is by its terms, drawn payable, *citing cases.* *

We claim, that in this case, the official character of the drawee was a material part of the bill, and insist that, even if it be admitted that the form of the bill was such as to make it doubtful whether, *if accepted as drawn*, the company could be held upon the paper, yet the agent was entitled to require an acceptance unequivocally according to the tenor as drawn, and that it was at its own risk, to take instead, an acceptance intentionally different from the tenor, and which turns out to be an acceptance different from the one to which the parties were entitled.

As to the general rule, see *Boehm* vs. *Garcias*, 1 Camp. 425—(note)—where Lord ELLENBOROUGH said: "The drawee of a bill has no right to vary the acceptance from the terms of the bill, unless they be *unambiguously and unequivocally the same*," and it was held that where a bill was drawn "payable in effective and not in *vals reals*," and an offer to accept "payable in *vals denaros*," (another sort of currency,) was refused, the drawer was liable for non-acceptance, and could not set up in defence to such action that such payment "in *vals denaros*" was "effective;" that the acceptance should have been general, and this question would properly have arisen in an action on the acceptance.

As to changing the status of the holder in reference to the proof necessary to recover, by taking an acceptance not according to tenor, see *Walker* vs. *Bank*, 5 Seld. cited

supra, where the draft, being drawn by the "Empire Mills" upon "E. C. Hamilton, Esq.," and accepted, "Empire Mills by E. C. Hamilton, Treas'r," it was held that the agent taking such acceptance would not be discharged by showing, in an action against him for negligence, that H. had no authority to accept for the company, and that he was therefore undoubtedly liable on the acceptance, because (SELDEN, *J.* p. 587), "acting in its capacity as agent, the bank *had no right to impose upon the plaintiff the burden of litigating* with Hamilton, the fact of his authority, or the risk of such litigation. The plaintiff was entitled to an explicit and unequivocal acceptance, or a refusal to accept, so that the bank might resort to its remedy against the drawer and endorsers; and the defendant had no right to receive anything short of such an acceptance without giving notice."

In this case, the Newark bank, deliberately and intentionally (see Finding, p. 9, fol. 156,) took an acceptance from Conger *as his individual and not his official* acceptance, and thus prevented any recovery from the company upon the bill. This abandonment of its right to require an acceptance unambiguously and unequivocally according to the terms of the bill as drawn, was made without asking further or other instructions, (Finding 4, fol. 154,) —was deliberate and intentional, and was therefore at the risk of the Newark bank. Nor can the defendant in this action discharge itself from the consequences of this variation, by insisting that even if accepted as drawn, Conger alone, and not the company, would have been liable on the bill, because,

(1.) The plaintiff was entitled to settle this question in an action against the company, unburdened by the necessity of litigating the question of the effect of the variation; and the agent here has prevented such settlement of the question in an action against the company by furnishing to the company the preliminary and complete defence, that the acceptance as taken was in form, and was distinctly understood to be, not that of the company, but of Conger individually.

(2.) And mainly, because the plaintiff, on the refusal of Conger to accept officially, was certainly entitled to have recovered from the drawers as for non-acceptance.

And so far from the agent being relieved from the operation and effect of the general rule, entitling him to an acceptance of the bill according to its tenor as drawn, by the fact that, if so accepted, it *may be doubtful* who will be liable, it seems to us that the existence of any such doubt requires the *strictest* enforcement of the rule and of the most unequivocal and unambiguous acceptance *as drawn*, in order that no rights of the holder may be lost or varied.

Instead of the doubtful form of the draft operating to relieve the agent from responsibility, in case he chooses (or perhaps is paid) to decide, without further instructions, what form of acceptance his principal *must* take at his hands, such doubtful form entitles the holder to require the very strictest enforcement of the agent's right to require the tenor of the draft to be followed; and, as we respectfully submit, a radical error of the Circuit Judge, in his opinion, was in holding that where there is, as here, a general rule to govern collection agents in relation to the character of acceptances to be taken, which rule is at once certain, safe for both holder and agent, and easy of application *in all cases*, yet the loss and burden of a deviation from the rule must be imposed upon the holder and not upon the agent. The Judge's opinion is based upon the assumption of the non-existence of any general rule to govern the agent's action, in doubtful as well as in clear cases, and if there is any such rule, his conclusion is erroneous.

We insist, however, that had the bill been accepted as drawn, the company would have been liable thereon, and the agent was therefore beyond question bound to procure an acceptance according to tenor, because—

FOURTH POINT.

The drafts were upon their face drafts on the company and not on Conger individually, and from the form of the drafts the defendant was bound to procure acceptances of the company, or of Conger, as secretary of the company.

1. On principle and from the nature of bills of exchange and without reference to authorities, the drafts were company drafts.

A bill of exchange is a *draft upon funds* of the drawer in the hands of the drawee, and is written *by the drawer* for the purpose of being charged against his funds. A draft against a person designated officially *by the drawer*, is therefore a declaration by the drawer that the funds against which he draws are in the hands of the drawee *in his official capacity*. He draws upon funds held *officially*, otherwise the words of official designation can have no effect whatever, and some reason or use must be assigned to them, for they are part of the paper and of *the declaration of the drawer*.

(This is the common usage and expression of business men in reference to paper of this character. See the letters and exhibits set out in findings.)

The words in the drafts "for account rendered," are well understood business terms, and could only mean an account rendered to the drawee in his official capacity, and therefore for funds in his hands of the company. (See form of drafts, Finding 2, p. 55.)

In *Olcott* vs. *Tioga R. R. Co.*, 27 N. Y. 546, (1863,) a bill dated at the office of the company, signed "J. R. W., president T. N. Co.," addressed "to H. B., treasurer, Tioga, C. I. M. & M. Co.," and directing to "*charge to motive power and account*," was held to be *on its face* a company bill.

2. The authorities are with the plaintiff, that these drafts *on their face* were drafts on the company, and *not on Conger individually*.

It is important in the examination of the authorities to distinguish between the different classes of negotiable paper, (whether drafts, bills or notes,) and also to note the parties between whom the question is raised.

1 Pars. N. and B. *169, "a bill drawn upon and accepted by an officer of a corporation, by the addition of his office, is the acceptance of the corporation," and (note b,) citing,

Shelton vs. *Darling*, 2 Conn. 435, where defendant, being sued individually on a bill addressed to "Noyes Darling, agent of the Commission Co.," and accepted "Noyes Darling, agent C. C.," the bill was held to be the acceptance of the company, and not of Darling individually.

In *Farmers, &c., Bank* vs. *Troy, &c., Bank*, 1 Doug., (Mich.) 457, a bill directed to "John A. Wells, cashier Farmers' and Mechanics' Bank of Michigan," and accepted "John A. Wells, cashier," was held an acceptance *of the bank*, and the bank was held liable.

See also *Fuller* vs. *Hooper*, 3 Gray, 334, where a bill of exchange addressed to H. G. & Co., with direction to "place to account of Pompton Iron Works," signed "W. B., agent," was held to be *on its face* a draft of the *iron works*, and not of W. B. personally—the ground being that the principal is disclosed and that the drawing is on his account.

This case is approved in *Olcott* vs. *R. R. Co., supra;* also in *Slawson* vs. *Loring*, 5 Allen, 340, a bill of exchange, headed "Office of Portage Co.," with direction to "charge to account of this company," signed "J. R. Jackson, agent," was held to be *on its face* a draft of the company upon funds of the company, and not of the drawer upon his own funds. In this case it was addressed to and accepted by "E. L., agent," but there was nothing to *indicate his principal*, and he therefore was held personally liable as acceptor on the face of the bill.

In *Carpenter* vs. *Farnsworth*, 106 Mass. 561, a bank check signed "I. D., Treasurer," with the words, "Ætna Mills" printed on the margin, was held to be *on its face* the check of the Ætna Mills, and not of I. D. personally.

See also *Rogers* vs. *Stone Co.*, 134 Mass. 31.

The above are all cases of *bills of exchange*, and are cases in which the paper is held to be on the *face of it* paper of the company, and not of the agent individually, and from these it would appear that *in relation to bills of exchange* the true rule is to determine whether the principal is disclosed by the paper, and whether the bills are drawn on account of the principal or funds in the hands of the principal.

The same general principle is applied as the rule in regard to other instruments where the question of contract by principal or agent rises.

Story on Agency, § 154. The general rule is that if from the whole instrument the intention to bind the company can be collected, the agent is not bound; and

1 *Dan. Neg. Instr.* §§ 403-407, this seems to be the test generally.

200 p 16 A.

(3.) The supposed authorities contra are not such.

1 *Dan. Neg. Instr.* § 413, cites only one case, an English case of 1732, and *Moss* vs. *Livingston*, 4 Comst. 208, where a bill drawn on "J. R. L., Jr., Prest. R. Mining Company, N. Y.," and accepted by "J. R. L., Prest. R. Mining Company, N. Y.," was held to be the acceptance of J. R. L. individually and not of company, but in this case (which was an action on the bill against J. R. L. individually) the judgment was put on the ground of want of proof of authority in J. R. L. to sign for the company, and this case has been sustained *on this ground alone* in later New York cases. See—

Bank of Genessee vs. *Patchem Bank*, 13 N. Y. 320, and S. C., 19 N. Y. 312, 316; *Olcott* vs. *R. R. Company*, *supra*, is also opposed to this decision on the point now in question.

Additional cases under Fourth Point, (2) *p. 16.*

Metcalf vs. *Williams*, 104 *U. S.*, p. 93, (1881), where a check being signed W. G. W., *V. Prest.*, and E. P. A., *Secy.*, without any designation or indication of the principal *upon the face of the check*, it was held in a suit against W. G. W. personally, that it was a valid defence that the check was received by the payee, (in whose name the suit was brought,) and intended by the signers as the check of a company of which they were the officers, and it was said (BRADLEY, *J.*, p. 97,) "that although unnecessary to determine whether the form of the document was sufficient to charge innocent holders with notice of its character, yet the fact that it bore two official signatures, is so unusual on the hypothesis of its being an individual transaction, and points so distinctly to an official origin, that it may very well be doubted whether any holder could claim to be innocently ignorant of its true character."

Also in *Hitchcock* vs. *Buchanan*, 105 *U. S.* 416, (1881), where a bill was headed "Office of B. N. M. Co.," with directions to "charge same account of B. N. M. Co.," and signed A. B., *Prest.*, C. D., *Secy.*, without further designation, and in a suit against the drawers personally, it was held upon *demurrer to the declaration* setting out the bill, (GRAY, *J.*, p. 417,) "that the bill was manifestly the draft of the B. N. M. Co., and not of the individuals by whom it was subscribed," and *Carpenter* vs. *Farnsworth*, *supra*, was relied on.

As to the same rule being applied to instruments not under seal, other than bills of exchange or commercial paper, see also,

Whitney vs. *Wyman*, 101 *U. S.* 392, (1879.)
Post vs. *Pearson*, 108 *U. S.* 418, (1882.)
Citing, *Goodenough* vs. *Thayer*, 132 *Mass.* 152.

In *Kean* vs. *Davis*, 1 Zabr. 683, (Ct. of Err. N. J., 1847,) relied on by the Court below, a bill drawn by "J. K., Prest. E. & G. R. R. Co.," on *W. T.*, was held to be on its face ambiguous whether it was the individual or company bill, and in the absence of explanatory proof would be considered to be J. K.'s individual bill, and the Court *held* that in an action against Kean, parol evidence should have been admitted to prove that the bill was drawn and received as a *company bill*, reversing a judgment against him for exclusion of this evidence. In this case there was nothing to indicate that the bill was drawn on *funds of the company*, or on account of the company. (So far as it bears on the question now in hand, viz., the *kind of acceptance* the agent was bound to procure, this case is relied on as a decision for plaintiff, because the agent here took an individual acceptance, *which absolutely* and by intention prevented the plaintiff from introducing parol evidence to show that it was a company bill. See *Sixth Point, infra.*)

FIFTH POINT.

In addition to the information disclosed on the face of the drafts, defendant was instructed by the letters enclosing the drafts that they were company drafts and not drafts of Conger individually.

See *Finding* 3, p. 55, fol. 152-153, letters describing them as drafts of "Newark Tea Tray Co."

The defendant itself so considered them in instructing its own correspondent.

Finding 3, fol. 153, letters to Newark bank, also describing as "Newark Tea Tray Co." drafts.

An agent is responsible for failure to follow instructions.

Story Ag. § 333.

Taken in connection with the drafts themselves, these letters were full notice to the defendant that the plaintiff held the drafts as company paper, and that,

as between itself and the drawers, the plaintiff was entitled to an acceptance of the company, or of Conger officially. The drafts and letters were sufficient instructions as to the character of the drafts, and the defendant evidently so considered them. (The Circuit Judge overlooks these instructions altogether in his opinion) But for the wilful negligence of the Newark bank, or their collusion with Conger, the drafts would have been protested for non-acceptance.

SIXTH POINT.

The acceptances taken on the drafts were the individual acceptances of Conger, and the company could not be held on them.

Bank of North America vs. *Hooper*, 5 Gray, 567.
Bass vs. *O'Brien*, 12 Gray, 477.
Tuber vs. *Cannon*, 8 Metc. 460.
Walker vs. *Bank of New York*, 5 Seld. 582. *supra.*

The acceptances taken were expressly understood to be the individual acceptances of Conger, and not acceptances in his official capacity. (Finding 9, p 56, fol. 156.)

Without regard to its right to hold the drawers on this refusal, (which is the real ground of action in this case) the plaintiff was, by this action of the Newark bank, prevented from showing *in any action* against the company, that the drafts were the company's drafts, such as it took them to be on discounting them.

In this view *Kean* vs. *Davis*, relied on by the Circuit Judge, is an authority for the plaintiff, because the agent here not only neglected to insist upon an acceptance "according to the strict tenor and form of the draft," which might perhaps have left the question an open or doubtful one, and not only also ignored the instructions of the letters that the drafts were forwarded as company drafts, but shut off the plaintiff from holding any one on the acceptances but Conger individually, by taking an acceptance which Conger and the agent understood was to bind him alone, and *not the company*

Kean vs. *Davis* establishes that if the acceptances had been as drawn, the plaintiff could, in a suit on the acceptances against the company, have shown the acceptances to be company acceptances, but by taking an acceptance which on its face was, and which was understood and agreed to be, an individual acceptance, the agent in this case has prevented any recovery against the company.

Walker vs. *Bank*, *supra*, decides that an agent has no right by taking acceptance not according to tenor, to impose additional burdens of proof on the holder in order to recover.

The real answer to the position taken by the Circuit Judge, seems to us to be that the plaintiff was entitled to recover from the drawers at once, *if the paper was not accepted by the company*, or by Conger officially; that the defendant by the form of the bill and by the letters, was instructed that the plaintiff was entitled as against the drawers to an acceptance of Conger officially, or of the company; that the defendant had the right to insist upon an acceptance strictly according to the tenor of the draft; that acceptance by the company or by Conger officially, was refused; that notice of this refusal should have been at once given; that the variation in the acceptance from the form of the drafts and from the letters, and the express exclusion of the company liability from the bills, was *at the risk of the defendant;* and that in fact the plaintiff thereby wholly lost the drawers and endorser of the bills.

The defendant was bound to communicate the information that Conger refused to accept officially, and there was sufficient time to receive further instructions. (*Finding* 4, fol. 154.)

SEVENTH POINT.

By the failure of the defendant to notify plaintiff of non-acceptance, the plaintiff has lost the drawers and endorser, who were then in good credit and standing, but were insolvent at the time the bills matured, (4 months later,) and were returned protested for nonpayment. *Findings* 5 and 6, p 56.

Conger also, the acceptor whom they furnished, failed to pay the bills.

The defendant is, therefore, responsible for the whole amount of the drafts.

Allen vs. *Suydam*, 20 Wend. 320.

(N. Y. Court of Errors, 1838,) where it was held that on failure of an agent to present for acceptance the damages to the holder for the loss of the drawer are *prima facie*, the face of the bill and burden is upon the negligent agent to show circumstances to reduce the recovery. In the present case it is, however, affirmatively proved by the plaintiff, that the drawers and endorser were good at the time of presenting, but were insolvent at the time information of the non-acceptance was received, and the defendant did not and could not show that Conger, who accepted the bills but failed to pay them at maturity, was responsible.

EIGHTH POINT.

The judgment in favor of defendant should be reversed, and judgment should now be rendered in favor of the plaintiff for the amount of the bills, with interest.

By the statutes, (Rev. St. §§ 649 and 700,) "the finding of the Court below upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury," (§649,) and the settled doctrine of this Court is that a special finding is equivalent to a special verdict, and is to be treated as such on proceedings in

error. (*Norris* vs. *Jackson*, 9 Wall. 125, 127; *Copelin* vs. *Ins. Co.*, *Ib.* 461, 467; *Smith* vs. *Sac Co.*, 11 Wall. 139; *Ins. Co.* vs. *Folsom*, 18 Wall. 249.)

This Court also (under Rule 3) follows the Court of King's Bench in England in its procedure on writs of error in matters not otherwise regulated by statute, or its own rules or practice, and the rule on the King's Bench on the reversal of a judgment against the plaintiff below, is to proceed also to give such judgment as the Court below ought to have given. (1 *Arch. Prac.* *235, and cases cited.) If a writ of inquiry to assess damages is necessary the Court may award it, and on its return give final judgment, but on a special verdict final judgment in the plaintiff's favor may at once be given. (*Ibid.*)

In case of reversal of this judgment, the only occasion for a writ of inquiry would be to determine the precise date when the improper acceptances were taken on each draft, (as these are not specially set out in the findings); but with the plaintiff's consent judgment final may be at once entered, without such writ of inquiry, for the total amount of the principal of the drafts, ($12,292.58, see *Finding* 1, fol. 151,) with interest on this amount from (say) October 1, 1875, a date ten days later than the letter of September 20, 1875, forwarding the last draft, (*Finding* 3, fol. 153,) which would allow more than sufficient time for the transmission of the drafts to Newark from Pittsburgh. Or, at all events, interest could, on the present record, be calculated on the principal sum of all the drafts from the date of maturity of the last draft—January 23, 1876. (*Finding* 2, p. 55.)

Interest on any judgment in favor of the plaintiff, being allowed according to the law of the place of the default, should be at the rate of *seven* per cent. (under the N. J. Statute of March 21, 1874, Rev. of N. J. p. 519, § 1.) up to the 4th day of July, 1878, at which date interest was reduced to *six* per cent. (Pamph. Laws N. J., 1878, p. 30,) and from the fourth day of July, 1878, at the rate of six per cent. This is under

the New Jersey rule, settled in *Jersey City* vs. *O'Callaghan*, 12 Vroom, (41 N. J.) 349, (Court of Errors and Appeals, 1879,) that where damages for torts are to be assessed, the rate of interest will change as the statutory rate changes during the accrual of the damages.

John R. Emery

TRADESMAN'S BANK CASE.

Points of difference between cases on the record.

In the Tradesman's Bank case (~~No. 375,~~) the amount of the drafts, seven in number, was $8,666.70, (*Finding* 1, p. 36, fol. 102.) In other respects the facts are substantially the same, (*mutatis mutandis,*) as those in the Exchange Bank case, with the exception that in the Tradesman's Bank case, the letters from it to the defendant enclosing the drafts, described the drafts only by their numbers and amounts, and did not describe them as "Newark Tea Tray Co." drafts. (No. 375, *Finding* 3, p. 37.) In the letters of the defendant to its Newark correspondent enclosing the drafts, the drafts were, however, (with one exception,) described as "Newark Tea Tray Co." drafts. (*Ib.*) 2063

The above brief will, therefore, be applicable to the Tradesman's Bank case, except so far as it relies upon this description of the drafts in the letters from plaintiff to defendant, as of importance in the case. Although entitled to its proper weight, we do not consider the point vital to either case, and therefore submit that in the Tradesman's Bank case also, the judgment should be reversed, and a judgment be entered for it against the defendant for an amount to be fixed upon the same basis as in the Exchange Bank case.

John R. Emery

112-276

Supreme Court of the United States,

OCTOBER TERM, 1883.

THE
TRADESMEN'S NATIONAL BANK
OF PITTSBURG, PENNSYLVANIA,
Plaintiff in Error,
vs.
THE THIRD NATIONAL BANK
OF THE CITY OF NEW YORK,
Defendant in Error.

No. ~~375~~. 63

THE EXCHANGE NATIONAL BANK
OF PITTSBURG, PENNSYLVANIA,
Plaintiff in Error,
vs.
THE THIRD NATIONAL BANK
OF THE CITY OF NEW YORK,
Defendant in Error.

No. ~~398~~. 86

BRIEF OF DEFENDANT IN ERROR.

ON WRIT OF ERROR FROM THE UNITED STATES CIRCUIT COURT FOR THE DISTRICT OF NEW JERSEY.

A. Q. KEASBEY,
Counsel for Defendant in Error.

HOLBROOKS' STEAM PRINTERY, 11 Mechanic St., Newark, N. J.

Supreme Court of the United States,

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BRIEF OF DEFENDANT IN ERROR.

On Writ of Error from the United States Circuit Court for the District of New Jersey.

These cases were tried together in the Circuit Court for the District of New Jersey, and determined by the Court without

the intervention of a jury, by stipulation of the parties, and in each case the Court made special findings of facts under sections 649 and 700 of the Revised Statutes.

There were no rulings of the Court in the progress of the trial excepted to, or presented by the bill of exceptions, and therefore the only question to be determined here is the sufficiency of the facts found to support the judgment.

Basset v. United States, 9 Wallace, 38.
Norris v. Jackson, 9 Wallace, 125.
Jermisons v. Leonard, 21 Wall, 302.

The facts found in both cases were essentially the same.

In both, drafts drawn by Rogers & Burchfield at Pittsburg to the order of J. D. Baldwin, and endorsed by him, were discounted by the Pittsburg banks, the plaintiffs in error, and transmitted for collection to their correspondent, The Third National Bank of the City of New York, the defendant in error. All the drafts were drawn upon "*Walter M. Conger, Sec'y Newark Tea Tray Co.*," Newark, New Jersey, and were transmitted to the New York bank within a few days after they were discounted.

In the case of The Tradesmen's Bank they were sent in letters describing them only by their numbers and amounts, and in the case of The Exchange Bank they were described in letters with other items by their numbers as "Newark Tea Tray Company."

The Tradesmen's Bank sent them all to their correspondent, The First National Bank of Newark, in which they were described as "Newark Tea Tray Company." The First National Bank caused them to be presented for acceptance to Walter M. Conger, who was then secretary of the Newark Tea Tray Company, and he wrote across their face "Accepted; payable at Newark National Banking Company; Walter M. Conger."

He declined to accept them in his official capacity. One draft, however, on the Exchange National Bank of Pittsburg, was accepted thus, "Accepted; payable at National Newark Banking Company; Walter M. Conger, Sec."

When the drafts were discounted by the plaintiff, the drawers were in good credit, but none of the drafts were paid, and they were all duly protested for nonpayment.

The plaintiff was not informed of the form of the acceptance until the first draft was protested for nonpayment and returned to it, at which time the drawers and endorsers were insolvent.

There was no proof and there is no special finding that the Newark Tea Tray Company or Walter M. Conger were insolvent at the time of the maturity of the drafts or at the time of the trial, nor that there was any effort made to collect the drafts from these parties.

It is stated in the special finding in The Exchange Bank case (p. 56), that in 1874 drafts had been discounted by the plaintiff and transmitted for acceptance to the defendant, and by them sent to the Newark bank, and that the Newark bank took acceptances from Walter M. Conger, individually, on those drafts without notice to the plaintiff. These drafts are not in question, having been paid in due course.

It is also found that no instructions were given in any way except by the letters of transmission, which, in the case of The Tradesmen's Bank, contained nothing but the numbers and amounts, as to the duty which was imposed upon the defendant, nor any information that the drafts were really upon the Newark Tea Tray Company, and not upon Walter M. Conger individually. This fact the plaintiff in error knew, but wholly failed to communicate it to its agent.

Upon these facts the Court directed judgment for the de-

fendant in both cases, and the question is, whether those judgments are sustained by the facts found.

It is insisted by the plaintiff in error that upon these facts the defendant, The Third National Bank of New York, was guilty of negligence in the discharge of its duty as the plaintiff's agent, whereby the plaintiff was subjected to the loss of the entire amount of the drafts, for which the defendant is liable.

The defendant in error claims that upon these facts the Circuit Court rightly arrived at the conclusion that the defendant in error was not liable.

In order to establish any liability, it must be assumed that the drafts were, in fact, drawn upon the Tea Tray Company, and that the defendant, although not advised of that fact, but informed by the drafts themselves that they were upon Walter M. Conger, described as secretary of that company, was negligent, either: first, in not presenting them for acceptance at all before maturity to the Newark Tea Tray Company; or, second, in presenting them to the secretary of the Company, on whom by name they were drawn, and procuring his acceptance without the addition of his official character, and in the latter case in not protesting them for non-acceptance and giving notice to the plaintiff of the facts as they existed.

This position cannot be maintained for the following reasons:

First. The defendant, The Third National Bank, was the agent of the Pittsburg bank in the city of New York, and the drafts transmitted to them for collection were payable in another state, and the defendant discharged its duty by sending them to The First National Bank of Newark, a competent party in the city where they were to be collected, for the purpose of taking such steps as the circumstances required, and was not liable for any failure of that sub-agent;

Second. Because if the drafts were in fact on the Company, the Newark bank, the agent of the defendant, was guilty of no negligence in the matter of procuring the acceptances, which created any liability for damages as against its principal;

Third. Because the drafts were not drawn upon the Company, but upon Walter M. Conger individually, and were properly accepted by him;

Fourth. Because if these drafts by any intendment arising out of the circumstances of the transaction and the previous dealings of the parties could have been regarded as drafts upon the Company, and the defendants could be held bound to know it, then they were properly presented for acceptance, and were duly accepted;

Fifth. If there was any failure to obtain proper acceptances, it arose from the doubt which existed on the face of the drafts as to the identity of the drawee, and the defendants and their agent exercised proper care in solving that doubt.

Sixth. The failure to obtain proper acceptances, if any occurred, was caused by the negligence of the plaintiff in giving proper information as to the party on whom the drafts were drawn.

Seventh. Because it does not appear that the plaintiff suffered actual loss as a direct consequence of the alleged negligence of the defendant.

These different grounds will be considered in their order:

First. The defendants as the agents of the plaintiff in New York, sufficiently discharged their duty by sending the draft to a competent agent in New Jersey for collection. This point is not alluded to by the Court in its opinion, but if it is sustained by the facts found, it is a proper subject of consideration. These special findings are in the nature of special verdicts, and in the case of a special verdict, the inquiry is always open

in the reviewing Court, whether taken in connection with everything else, that appears, it is sufficient to support the judgment.

The S. C. Tryon, 105 U. S., 267.

In *Britton v. Nichols*, 104 U. S., 757, it was *held* that where a party in Illinois transmitted to bankers residing in a city in Mississippi, a note for collection which was there dated, but did not inform them nor were they aware of the residence of the maker, and where the bankers in due time put the note in the hands of a reputable notary of that city, for the purpose of presentment and demand, they were not liable to their correspondent for the manner in which the notary performed his duty; that the notary became the agent of the holder, and for failure to discharge his duties, he alone was liable.

It would seem to follow from the principle established in this case, that where the Pittsburg bank sent to a New York bank, as its agent, drafts payable in New Jersey, the extent of the duty of the receiving bank was to send those drafts to some responsible bank in the city where they were payable for acceptance and collection; and if that bank, being a competent agent for such duty, neglected it, recourse must be had to it alone.

In the case of *Allen v. Merchants' Bank of New York*, 15 Wend., 482, referred to in the case of Britton v. Nichols, Mr. Justice Nelson said: "A note or bill of exchange left at a bank, and received for the purpose of being sent to some distant place for collection, would seem to imply, upon reasonable construction, no other agreement than that it should be forwarded with due diligence to some competent agent to do what should be necessary in the premises. The language and acts of the parties fairly import so much, but never beyond it. The person leaving the note is aware that the bank cannot

personally attend to the collection, and that it must, therefore, be sent to some distant or foreign agent, and there seems to be nothing in the nature of the transaction which could reasonably imply an assumption for the fidelity of the agent abroad."

Although this case was reversed by a vote of fourteen Senators against ten, in the Court of Errors, the view of the Supreme Court, sustained by the other cases cited in Britton v. Nichols, was approved by this Court.

No other custom or usage was proved in this case, and it will be assumed that The First National Bank of Newark was a competent agent for the fulfillment of this duty.

Second. Assuming that the drafts were, in fact, on the Tea Tray Company, the defendant was guilty of no negligence creating any liability for damages.

What was the duty imposed or undertaken?

The drafts were not transmitted with any instructions to procure acceptance. There were, in fact, no instructions whatever. They were merely included in a batch of other papers.

In the case of The Tradesmen's Bank they were not even designated except by figures.

Not a word of information was given as to their character, or as to any reason why they should be regarded as other than they appeared on their face.

They had been already discounted before acceptance, and were sent for *collection.* So the declaration states, and so the circumstances of their transmission prove.

That they were sent soon after being discounted is a mere matter of routine. The transmission of such drafts had been going on for years, at the same time with drafts on the Company expressly, without a word intimating a desire for a speedy presentment, or notice of non-acceptance.

In fact there was absolutely no communication concerning them except the bare letter of transmission.

It was the same as if they had been simply sent by a messenger without a word.

Under these circumstances the duty of the defendant rests on the principles of commercial law, and arises solely out of the relations of the parties as principal and agent.

What was that duty ?

The drafts were payable four months after *date*, and clearly it was not necessary, in order to hold the indorser and drawer, to present them for acceptance at all before maturity.

Daniel, in his work on Negotiable Instruments, states this to be the general commercial law of the civilized world, and all the authorities support it.

1 Dan. Neg. Inst., 351.

1 Pars. Notes and Bills, 337 and notes.

Byles on Bills, 174.

In *Walker v. Stetson*, 19 Ohio, 400, where a bill of exchange on G., payable at a day certain, was not presented for acceptance at all at the designated place of business of the drawee, but presented for payment at maturity at the bank where it was payable,—and where G. was in funds and would have paid if he had known of its existence, but became insolvent,—it was held in an action against the drawer that the holder was not bound to present it for acceptance ; that it was the duty of the drawer to have notified the drawee, and that presentment at the bank was sufficient to charge the antecedent parties.

This is as strong a case as can be put to show that the *holder* is not bound to present for acceptance in order to charge drawer and indorser.

In *Oxford Bank v. Davis*, 16 Cushing, 188, it appears that

a bill of exchange, payable six months after date, and endorsed to the plaintiffs, was discounted by them and sent to the agents of the plaintiffs in Boston for collection ; that the Boston bank mislaid it for five months, without presenting it for acceptance or giving any notice of non-acceptance ; that the drawer went into insolvency within two months after the note was drawn ; that the drawees had accepted and paid their paper before his insolvency, while this bill was mislaid, and it was not protested until long after the insolvency of the drawer.

It was held that the endorser was liable.

In *The Fall River Bank v. Willard*, 5 Metcalf, 216, it was held that where one endorsed a bill for the accommodation of the drawer who had agreed with the endorser that it should not be presented to the drawee for acceptance until maturity, which agreement was not known to the endorser, and it was not presented to the drawee until maturity and then dishonored, the endorser was not thereby discharged. And it was also held that although the bank officer had informed the drawee of the draft and was told that he would not accept or pay it, yet, that that was not a presentment or acceptance which required any notice to the endorser.

In fact the same result is shown in the numerous cases which will be found referred to in the text books cited above.

But it is insisted that there are two exceptions to the rule.

First. Where an express direction is given, and

Second. When it is put into the hands of an agent for collection or negotiation, and that in this case, although there were no express directions to the defendants concerning acceptance, they were bound by their duty as agents for collection, to present it for acceptance without unreasonable de-

lay, and that if they failed to do so, and to give notice to their principal of the fact of non-acceptance, they are liable to damages for such neglect—that is to say, that although endorsers and drawers will not be discharged by the neglect to present for acceptance, yet since the holder, if advised of the delay to present, or of a refusal to accept, might take earlier measures against the drawer, and might be warned against discounting more paper of a similar character, the defendant is therefore liable for the neglect.

This view is sustained in the case of *Allen v. Suydam*, 17 Wendell, 368. Affirmed in 20 Wend., 321.

But Prof. Parsons, in the first volume of his work on Notes and Bills, on page 346 in note, denies the soundness of this view, and earnestly insists that the reasons given for it by the New York Courts are not satisfactory, and that since it is no negligence for the principal not to present, it cannot be said to follow that this *would be* negligence in the agent; and that there is no authority cited by the New York Courts, or any just reason why an agent is bound to use greater diligence in presenting the bill for acceptance than if he himself were the owner and holder of the bill.

I have found no case in which the views of the New York Courts have been followed, and the position they have taken seems inconsistent with sound principle, and is not sustained by the authorities.

In Beawes' Lex. Mer. Chap. on Bills of Exchange, fig. 18, it is stated: "When any person has bills sent to him to procure an acceptance, with directions to return them, or hold them at the order of the seconds, &c., and the person to whom they

are sent either forgets or neglects to demand acceptance, or suffers the party on whom they are drawn to delay their acceptance, and the drawer in the interim fails, he is certainly very blameworthy for his carelessness and disregard of complying with his obligation, *though this will not subject him to the payment of their value.* But if he *should be urged to procure acceptance and payment* of a bill sent to him and should protract to get it done, and the acceptant being ignorant of the drawer's circumstances, declares he would have accepted it had it been timely presented, the person making the neglect will be obliged to make good the loss that has happened through his omission or carelessness."

The writer evidently considers that even where the bill is sent expressly for acceptance the failure to demand acceptance before maturity will not charge the agent with liability for the value, although the drawer and endorser in the meantime fail, and that nothing but actual neglect of positive and urgent instructions to procure acceptance without delay will work such liability.

If the plaintiffs here had placed any reliance upon the Tea Tray Company or Conger, and had not reposed unlimited confidence in Rogers & Burchfield, they would have taken some steps to intimate to their New York correspondents their desire for a speedy acceptance or notice of its refusal; but they gave no such intimation, although similar transactions had been going on for years; they had no knowledge of the Tea Tray Company, and made no inquiries concerning it; they simply sent the draft for collection, leaving their agent liable only for ordinary care in pursuing the ordinary mercantile course with respect to them.

In the case of *The Bank of Washington against Triplet,* 1

Peters, 25, Chief Justice Marshall clearly shows that he coincides with these views, and would not have sustained the position afterwards taken in the New York Courts.

That case was a suit against a bank to whom a draft had been sent for collection, for damages for the failure of the bank to obtain the acceptance of the drawer, or notify the holder of non-acceptance.

It was a draft payable in four months after date. The bank had attempted to procure the acceptance of the drawee, but failed because the drawee was not to be found. It was not actually presented, but was protested at maturity for non-payment. No specific instructions were given, and the bank was left to act according to the law merchant.

The Chief Justice says, p. 35: "Such a bill need not be presented, but if presented and acceptance be refused, it is dishonored and notice must be given. Had the bank taken no step whatever to obtain an acceptance, no violation of duty would have been committed. Can any unsuccessful attempt to do that which the law does not require, place the agent in the same situation that he would have stood in had the drawer been found and had positively refused acceptance? Had the drawee received notice of the bill, he could not have known that it would be presented for acceptance, because the law did not require it. It would have been a prudent precaution to have given information that the bill was not accepted, because the drawer had not been found, but we cannot say that the omission would subject the agent to loss, unless such was the special usage of this bank. The bank was the agent of the holder, and not of the drawee."

In this case, however, the agent received no specific instructions, but was left to act according to the law merchant; a

course of proceeding which did not discharge the drawer, could not render the agent liable to the principal.

And in the case of *Hamilton v. Cunningham*, 2 Brock, 350, tried shortly after the decisions in the above case,

Chief Justice Marshall cites from Beawes' Lex. Mer.:

"It is incumbent on him to whom a bill is sent in commission" (quoting the same passages above cited), and concludes that an agent for collection does not bear the same relation to his principal that the holder of a bill to the drawer or endorser, but that the same negligence or omission, which would deprive a holder of all recourse against the endorser or drawer, will not subject the agent to his principal to the extent of the bill placed in his hands for collection.

We insist, therefore, that even if these drafts had been drawn expressly upon the Company, and the defendant had wholly delayed to present them for acceptance, or had casually requested the secretary to accept them personally, if formally presented, and he had refused, and defendant had failed to give notice to the plaintiff,—it would not have been liable in damages.

Third. The drafts were not drawn upon the Company but upon Walter M. Conger individually, and were properly accepted by him.

It is not shown that Walter M. Conger had any relation to the Tea Tray Company other than that which is to be legally implied from his position as Secretary. It is not proved that he had any power or authority to accept bills, or to sign notes for the Company, and no such authority can be implied from the fact that he was Secretary.

The nature of that office is such that it must be presumed that he had no such authority. The fact that the plaintiffs had been in the habit of receiving and transmitting bills drawn upon the Company in express terms, raises the presumption that these drafts, so different in form, were not intended to be drawn on the Company.

They were on Conger individually, though described as secretary.

If the plaintiffs desired to exclude this presumption, it was their duty to advise the defendant of the facts which they had learned from Burchfield and believed, which tended to vary the plain import of the drafts themselves.

The designation of the drafts by The Exchange Bank as "Newark Tea Tray Company," in the midst of other drafts to be checked off by a clerk, was no such information.

The defendants were entitled to look to the drafts themselves for entire information as to the parties on whom they were drawn, and if there was any obscurity or doubt as to the party, it was the duty of the plaintiffs to dispel it by explicit directions.

Tucker Manufacturing Co. v. Fairbanks, 98 Mass., 104.

Parol proof cannot be given that they were intended to be drawn otherwise than they weredrawn.

Chaddock v. Van Ness, 6 Vr., 517, and many cases cited.

Looking at these drafts themselves, they were plainly drawn upon Walter M. Conger individually, with the *descriptio personæ* of "Sec'y Newark Tea Tray Co."

The bank was not bound to know that such a Company existed. There was nothing on the paper to indicate that

such a Company had anything to do with the transaction. The fact that other drafts expressly drawn on the Company had passed through the same channel, tended to exclude the presumption that these drafts had any connection with the Company. The bank was bound to present the drafts for acceptance by Conger, and would have failed in its duty if it had passed him by, and contented itself with procuring the acceptance of *The Newark Tea Tray Company.*

Suppose it had done so, and the Company had failed, leaving Conger good.

How could the bank have excused itself?

Did the fact that Conger was described as secretary of Tea Tray Company residing at Newark, import that the bill was drawn on the Company of which he was secretary?

He was not even such an officer as would naturally or legally be authorized to accept bills and bind the Company.

Suppose it had been on Rev. A. B., Rector of St. Stephen's Church. Would it ~~bind~~ be one the Church corporation?

And yet the Rector is the President of the corporate board.

Or on F. W. J., Superintendent Penna. R. R. Co. Would it ~~bind~~ be one the Company?

Or on R. S. S., Secretary of N. J. Historical Society.

Or on C. D., Secretary of the Newark Gas Co.

And so illustrations might be multiplied.

It is plain that in all these cases the addition of the official character is only *descriptio personæ.*

In fact it may be said that if this bill had been accepted just as it was drawn—W. M. Conger, Secretary Newark Tea Tray Co. it would not have bound the Newark Tea Tray Company.

And accepted as it is it binds the Company just as much.

If it could be held that it was in fact drawn on the Com-

pany, then it would be held that it was accepted by the Company.

If a bill on A. B., Secretary of a Company, is a bill on the Company, then the simple signature of that Secretary is sufficient to bind the Company as an acceptance.

1 Dan. on Neg. Inst., 496–7, etc.

But it is not so.

In a note or bill, whether as to drawer, maker, or endorser, "The marks of an official character must not only exist on its face, but *predominate*."

Mech. Bank v. Bank of Col., 5 Wh., 326.

In the application of this rule there is a long line of decisions showing that even in a promissory note the addition of a corporate official character or designation to an individual name, does not bind the Company, but leaves the individual liable.

Especially is this so as to the *acceptor* of a bill, whose name is the only guide as to the party intended to be charged. Most of the cases have arisen where in signing a note the President or the officer has used his own name, naturally adding his official character—as usual in his corporate transactions.

But where you intend to draw on a *Company* how easy it is to say so—and to *name the Company*, leaving it to accept by any officer who has power?

Why draw on an individual naming him as *Secretary?*

The Secretary has no implied power to accept bills.

Blood v. Marense, 38 Cal., 590.

First National Bank v. Hogan, 47 Mo., 472.

Does not the very fact that it is drawn on the Secretary

who ordinarily has *not* power to accept for the Company, show conclusively that it was *not* intended to draw on the Company?

There must be something to show that in fact it was the Company, and not the individual officer who was intended.

Tucker Co. v. Fairbanks, 98 Mass., 104.

This something may be expressed in many ways, but it must be expressed in some way.

Most of the ways in which it has been expressed are shown in the very full list of cases cited in 1 Dan. Neg. Inst., sec. 300, 398 and 403, where most of the authorities are collected. Also Shearman on Negligence, sec. 242 and notes.

And the subject is lucidly discussed in two papers in the Albany Law Journal by Mr. F. B. Murray, of Buffalo. One Vol. 13, 323, May 6, 1876, the other Vol. 13, 342, May 13, 1876.

In Daniel's volume and the last of the above papers the whole subject is fully discussed, and all the authorities collected.

The result is that on a draft drawn as this is, and accepted just as drawn, the Company is not bound.

And in some of the cases where much stronger marks of an intention to bind the corporation appeared, the same result was reached.

The cases, as applied to *acceptors* of bills, are cited in 1 Dan. Neg. Inst., 412–414.

The case of *Moss v. Livingston*, 4 Coms., 208, is precisely in point, only it is stronger than this, for the bill was drawn on J. R. L., President Rosendale Manufacturing Company, N. Y., and so accepted, and it was held not to be the obligation of the Company.

See *Sturdivant v. Hull*, (59 Me., 172,) 8 Am. R. 409. *Means v. Swormstedt*, 2 Am. R., 330 and *note*, which goes over the cases.

See the case of *Walker v. Bank of N. Y.*, 9 N. Y., 582, where a bill was drawn by Empire Mills on E. C. Hamilton. Hamilton was its treasurer. He accepted "Empire Mills by E. C. H., Treasurer." Held in an action like this that it was not properly accepted.

That it was not his individual acceptance, because it was in the name of the Company.

And that it was not the Company's, because the Company was not the drawee.

In the case of *Sturdivant v. Hull*, ub. sup., the note was signed John T. Hull, Treasurer St. Paul's Parish. And it was held *not* the note of the Church.

See *Barlow v. Cong. Soc.*, 8 Allen, 460 (citing numerous cases).

In *Kean v. Davis*, 1 Zab., 683 (Supt. Ct. Spencer, 425), where a bill was drawn on Thomson to the order of The Eliz. & Somerville R. R. Co. by John Kean, President E. & S. R. R. Co., parol evidence was admitted to show that Kean drew the bill on behalf of the Company.

But the Company was named in the bill, and this created an ambiguity to explain which the evidence was admitted.

But here no name of the Company appears in the body of the bill. It is simply drawn on the individual described as secretary. There is no ambiguity.

If any intention to draw on the Company existed it would have been so expressed.

But in the case of Kean v. Davis it was clearly the view of the Court that without explanatory proof Kean was personally liable.

If, therefore, these were in fact upon their face drafts upon Conger, and the defendants had no instructions or explanations which would lead them to think otherwise, then to present them to the Company was useless, and to fail to do so was plainly no negligence.

They must be either ~~the~~ drafts ~~of~~ Conger or ~~of~~ the Company; they cannot be both.

Tabor v. Cannon, 8 Metcalf, 460.

13 Alb. L. J., 342, and cased cited.

The following cases hold that where there is no other mark than the addition of official character to the signature, it is not sufficient to bind the corporation, but only a *descriptio personæ*.

Burbank v. Posey, 7 Bush. (Ky.), 373. Note signed A. B., President Henderson Loan Co.

Fiske v. Eldridge, 12 Gray, 474. Note signed "J. S., Trustee Sullivan R. R. C."

Scott v. Baker, 3 Hag. (W. Va.), 285. Note began: "We promise, &c., and signed, "W. T., Pres't Blennerhasset Oil Co., and W. H., Treasurer."

Hovey v. Bannister, 8 Com., 31. Note signed "B. & C., Trustees of Union Religious Society."

Fitch v. Lawton, 6 How. (Miss.), 371. Note dated "Commercial Bank of Rodney, Rodney, Miss., March 8," and began: "We promise," &c., and was signed "T. F., President, and J. L., Cashier."

Haverhill Ins. Co. v. Newhall, 1 Allen, 130. Note began: "For value received, in Policy No. 11,776, I promise," signed "A. B., President Dorchester Ave. R. R. Co.," and was proved to have been given in consideration of a policy issued to the Company.

Fowler v. Atkinson, 6 Minn., 579, where the signatures were individual, with the addition: "Trustees of Sch. Dist. No. 1."

Drake v. Fluellen, 33 Ala., 106, where was added: "Secretary Masonic Female College."

Brockway v. Allen, 17 Wend., 41, where was added: "Trustees of Baptist Society."

In *Dutton v. Marsh*, 6 Q. B., 361, the note was: "We, the Directors of the Isle of Man Slate and Flag Company," and the individuals signed it, attaching the seal of the Company; yet the individuals were held bound. (Cockburn, C. J.)

This was a well-considered case in 1871.

Haight v. Naylor, 5 Daly, 219, draft on N. W. Day, agent of Coöperative Brush Company, and so endorsed. Held not to be a draft on the Company, though more facts were proved than in this case.

Powers v. Briggs, 79 Ill., 493 (22 Am. Rep., 175). The note was: "We, the Trustees of the Seventh Presbyterian Church, promise," &c., and was signed by four individuals describing themselves as "Trustees." Held that they were individually liable.

In all cases where the paper was held to be a corporate ob-

ligation there was something in the body of the instrument to indicate the intention to bind the corporation.

They are all collected in 1 Dan. on Neg. Inst., sec. 455, &c.

A collection of cases is in the note to *Burlingame v. Brewster*, in 22 Amer. Rep., 177.

Fourth. If these drafts must be held to have been on the Company, and the defendant and its agent bound to have known it, even then they were properly presented for acceptance and duly accepted.

If they were to be considered drafts on the Company, though merely drawn upon its Secretary as such, it must be because the Secretary was known and held by both parties to represent the Company fully for the purpose of receiving and accepting drafts, and was admitted to have full power for that purpose.

If The Exchange Bank, in its letter of transmission designating the drafts by the name of the Tea Tray Company's drafts, must be held to have informed the defendants that they were the drafts of the Company, then they also informed them that the Secretary was its responsible agent, and authorized to accept for the Company.

With this information to guide it the defendant fulfilled its whole duty by procuring the acceptance of Conger, the Company's agent; and if the Secretary was such an agent, then any act by which he indicated acceptance must be held to be the acceptance of the Company, precisely as if the drafts had been drawn upon its President and accepted by him.

An acceptance may be made by an agent, and if the Secre-

tary was such, his acceptance was sufficient, if the draft was a draft on the Company.

1st Daniel, 365.

1st Parson's Notes and Bills, 281.

It is not necessary that an acceptance should be in any particular form or even be in writing or written on the paper itself.

It may even precede the drawing of the paper.

It may be implied from the conduct of the drawee.

1 Daniel, 371.

Even the signature of the drawee is not essential.

Any words or any act used by the drawee by reasonable intendment, signifying that he honors the bill, will amount to an acceptance.

Certainly, therefore, if a draft presumed to be drawn upon a Company, although drawn upon its Secretary, is accepted by the Secretary himself by writing the word "accepted" across its face, and signing his name to it must be deemed an acceptance by the Company.

It cannot be deemed to be his individual acceptance, unless the draft is also deemed to be drawn upon him individually.

It follows necessarily from the assumption that the draft is on the Company, that the acceptance is also by the Company.

The only escape from the conclusion that these drafts were accepted by the Company by the act of its Secretary, is to regard them as drafts upon the Secretary himself.

In any case the acceptance is sufficient, and the duty of the defendants was properly done with respect to it.

Nor is the case affected by the fact that the Secretary declined to add his official character to its acceptance.

The true explanation of this refusal is that the drafts were not upon the Company at all, but upon its Secretary.

But if it must be held that they *were* on the Company, then the refusal merely indicates that the Secretary regarded his acceptance as sufficient as it stood.

But it either bound the Company, or it did not. If it did, it was because it was the Company's draft, duly accepted by its Secretary, whose authority was evidenced by its being drawn upon him by name.

If it did not, it was because it was not a draft on the Company, but on the individual who happened to be its secretary, and was duly accepted by him.

Therefore, in any aspect of the case, these drafts were properly presented for acceptance, and were in fact accepted by the party on whom they were drawn—whether that party was the secretary or the Company, and the defendant cannot be charged with negligence or omission of its duty.

Fifth. If there was any failure, it was caused by the doubt on the face of the drafts, and the defendant cannot be held liable, even if it did not succeed in solving that doubt correctly.

This is an action for a tort.

It proceeds upon the ground that a duty exists, and that the defendant failed in the performance of it, by means of which the plaintiff sustained a loss.

The question is, therefore, whether the circumstance disclose such negligence and unskillfulness on the part of the defendant as to make it liable for damages.

A bank undertaking a collection is bound to the use of *ordinary care* only—such as is ordinarily used by banks in that business.

Reasonable skill only is required.

It is not necessary to exercise the extraordinary skill required to solve doubtful questions of legal liability.

If it was *doubtful* whether this was a draft on the corporation or the individual officer, the defendant was not chargeable with culpable negligence or want of due care in not knowing which to present it to.

And in that doubt, it was ordinary care, the part of prudence, to present it to the actual person named as drawee.

In fact it turns out that this was the *right* course.

If the contrary had been pursued, and the Tea Tray Company had proved worthless, and Conger good, then, indeed, there would have been want of ordinary care.

In the case of *Kean v. Davis*, the Supreme Court of New Jersey had held that in such a case the draft must be deemed *prima facie* on the individual. Thus the defendant would have been advised if it had consulted counsel.

See a full discussion of this subject by Shaw, Ch. J., in *Merchants' Bank at Baltimore v. Merchants' Bank in Boston.* 6 Metcalf, 13.

This case was as to *post notes* where it was doubtful whether days of grace were properly allowed.

The bill was presented in the way that had been usual, but was soon after judicially declared to be *wrong*. Held bank *not* liable for negligence.

In this case the most that can be said is that it was doubtful whether the drafts were actually upon the ~~bank~~ Company or upon Conger.

We insist that they were plainly upon Conger; but upon the contrary, the theory of the plaintiffs is that they were upon the ~~bank~~. Company,

The defendants were obliged to solve this doubt by what appeared on the face of the drafts.

If they were really upon the Company, as the plaintiffs were informed, it was easy for them so to have advised the defendant. If by neglecting such instructions the matter was left in any degree doubtful, the defendant is not liable for any neglect or omission induced by that doubt.

Sixth. If any failure occurred it was caused by the negligence of the plaintiff in failing to give proper information as to the party on whom the drafts were drawn.

They sent forward these papers without special instructions as they had for years previously done, and without any suggestion as to the identity of the drawee. They describe the drafts as of the Tea Tray Company, and of Conger its Secretary, indiscriminately.

They cannot postpone their complaint until loss occurs, and then seek to hold the defendants responsible.

They did not even suggest the presentment of the drafts for acceptance or manifest any concern whether they were accepted or not.

They never made any inquiries of the Tea Tray Company, or of Conger, as to the state of their dealings with Rogers & Burchfield.

In the case of The Tradesmen's Bank, the letter transmitting the draft expressly stated that they were "for *collection* and return," and requested the defendants to "report *collections* by numbers," indicating that the collection of the drafts when

matured was all that they expected, and that they relied upon the drawers, in their dealings with the drawees, to provide for payment when due.

All this conduct on the part of the plaintiff manifestly tended to bring about the negligence, if any such negligence can be imputed.

The doctrine of contributory negligence is tersely stated in *Dean v. Murphy*, 101 Mass., 455.

"Wherever there is negligence on the part of the plaintiff, contributing directly, or as a proximate cause, to the occurrence from which the injury arises, such negligence will prevent the plaintiff from recovery."

Sherman on Negligence, 23, and cases cited.

Certainly it must be conceded that if any act of negligence occurred in this case, it was due directly to the want of ordinary care on the part of the plaintiff in communicating to their correspondents the information by means of which such an act would have been readily avoided.

The plaintiffs were the owners of the drafts and had parted with the entire amount which they represented before forwarding them for acceptance.

The defendant was a mere agent without interest and without reward, except such as was incidental to its business as a bank.

If the plaintiffs did not take the simple precaution to give to the defendant the information in their possession as to the nature of the drafts and especially of facts now asserted which contradicted the plain import of the drafts themselves, they cannot complain if the defendant did, as they insist, fall into an error naturally arising from the want of such information.

Seventh. It does not appear that the plaintiff suffered actual loss as a direct consequence of the alleged negligence of the defendant.

The amount of this loss must be proved, and if not proved, the judgment for the defendant ought not to be disturbed since only nominal damages could have been allowed.

In the case of *Allen v. Suydam*, 17 Wend., the Court held that in the absence of knowledge as to what the amount of loss was, except from proof of the amount of the draft, the verdict must be for the amount, with interest.

This was reversed in the Court of Appeals, 20 Wend., 320, where it was held:

That the relation of the party to whom the bill is transferred for collection, and his principal, is not the relation of indorser and indorsee, so as to throw the loss of the whole amount upon the latter if he neglects to present it for acceptance and payment.

And that the payment of the amount of the bill by the agent would not subrogate him to the rights and remedies of him from whom he received it as against other parties who may remain liable.

And therefore the agent is liable only to the actual damages sustained by reason of his negligence.

And the Court held in that case that all the circumstances tended to show that the loss would have occurred even if the presentment had been made, and that the jury should have been instructed to give only nominal damages, or at least that they should give such damages as they thought it probable the plaintiffs might have sustained by the delay in presenting the draft for acceptance immediately.

In the case of *Hamilton v. Cunningham*, 2 Brock, 350, Chief Justice Marshall takes the same view, and holds that the negligence or omission that would deprive a holder will not subject an agent to his principal to the extent of the note placed in his hands for collection. And that he is responsible to the precise amount of the loss caused by his mistake.

And in the case of *Bank of Mobile v. Higgins*, 3 Ala., N. S., 306, a note was sent to the bank for collection without any special duties being imposed beyond those of a naked agency.

The Court cites the passages from Beawes above referred to, and also the case of *Hamilton v. Cunningham*, and says:

"That the discharge of a solvent party for neglect is not an actual loss when there are other solvent parties who remain bound, and that it remains with the principal to show, before he is entitled to the amount of the note as the measure of his damage, that the parties who remain bound are unable to pay."

In this case, Walter M. Conger is bound by his acceptance, and it nowhere appears that he is not able to pay the drafts.

No proof as to his solvency is offered.

It has been already shown that the drawer and endorser were not discharged, even if there was a failure to procure proper acceptance before maturity.

It does not appear that the plaintiffs made any attempt to hold the Tea Tray Company, or even made any inquiries as to whether they regarded themselves bound upon the drafts. But they simply assume that they were drafts on the Tea Tray Company, and that the acceptance was not valid.

The defendant insists that if the drafts were on that Company, the acceptances were valid; and before the plaintiffs can

claim damages for negligence they should at least be required to ascertain whether the party on whom the drafts were as they supposed drawn, sought to repudiate its liability.

It was necessary for the plaintiffs to show definitely and affirmatively that they had sustained an actual loss by reason of the alleged negligence.

In the absence of such proof, it is clearly unjust to hold the defendants liable for the amount of the drafts, with no subrogation of remedies as against other parties.

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